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# REPORT

ON THE

## PENITENTIARY SYSTEM

IN THE

## UNITED STATES,

PREPARED UNDER A RESOLUTION OF THE

SOCIETY FOR THE PREVENTION OF PAUPERISM,

IN THE

## CITY OF NEW-YORK.



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*The Chairman of the Committee appointed to present a General View of the PENITENTIARY SYSTEM, as it now exists in the United States, respectfully presents the following*

## **REPORT:**

THE importance, as well as the intrinsic difficulties of the subject, committed to the research and fidelity of the Committee, have subjected them to formidable embarrassments in every stage of their investigation. A voluntary association of individuals, to ascertain the operation of municipal ordinances and regulations, and to trace out the effects and detect the errors of various systems of criminal law, throughout a country of vast extent, act under restraints not incident to boards of inquiry clothed with public authority, sustained by adequate means, and acting under auspices compatible with the moral importance of the undertaking. But until the legislatures of the different states, and the constituted authorities of the country, encourage and support those regular systems of examination and observance, that are competent to correct and prevent public evils; until they learn to avoid the errors of other governments and other countries, (a) in remaining inactive and indifferent, until awakened to a sense of duty by the loud cries of deep and complicated grievances; we must repose our hopes and rest our confidence, on the philanthropy, the patriotism, and the zeal of individuals.

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(a) Bishop Burnet, in his history of his own times, more than a century ago, appealed to the attention of the House of Commons, concerning the Poor Laws of England. He inculcated the necessity of their immediate correction. His voice was not heard. The paupers of Great-Britain now cost her not far from \$50,000,000 annually. Vide vol. iv. p. 365.

By the Penitentiary System, as treated of in this Report, the Committee would refer to the means resorted to in the different States of the Union, to prevent crimes and misdemeanors, to reform convicts, and to promote public security. These means include the adoption of Criminal Codes, the erection of prisons, and the confinement of convicts to hard labour within their precincts.

The history of nations teaches us, that the welfare of empires may be frequently endangered by sudden revolutions in popular opinion, on subjects which embrace the general and individual relations of society. Wild and speculative doctrines will be occasionally started that strike at the abrogation of existing systems of civil polity, and silently and rapidly acquire strength and stability, until the number and zeal of their votaries become too formidable for the effectual appeals of reason and experience. A period has arrived in this country, which fully illustrates this position. Without a due regard to facts and reflection, there are many in the United States, who advocate the renunciation of the Penitentiary System, and consequently a change in our Criminal Jurisprudence that will increase the severity of its character. Abstaining from all strictures, at present, on the tendency and singularity of such an opinion, we would remark, that communities seldom retrace their steps in the trials of experience, until they reach their last extremity; and whether it is now decided to renounce or to retain this System, the determination will probably settle, for ages, the spirit of our laws, in relation to crimes and punishments. It may therefore be expedient for the Committee, in the first place, briefly to advert to the rise of the Penitentiary System in the United States. Previous, however, to doing this, they feel constrained to make a few reflections on a subject intimately connected with it—the lamentable neglect of mankind, in the different periods of human society, concerning the punishment and prevention of crimes.

Unfortunately for the deepest interests of humanity, and for the moral character of nations, Criminal Jurisprudence has not



attracted the attention, and commanded that anxiety which its importance has demanded. This fact is visible in the history of every civilized people, both of ancient and modern times. Wars have been waged, and vast and bloody revolutions accomplished, for the acquisition and establishment of political rights; laws have been invented and improved, from one age to another, for the security of property and the enjoyment of civil immunities; moral and relative obligations have been defined with a nicety that strongly marks the perfection of human discrimination; but that science which cautiously and successfully graduates punishments to offences, and, in the greatest possible degree, prevents the perpetration of crimes, is still in its infancy.

In arbitrary governments, where the arm of power is the rule of law, despotism never pauses in her march over the lives and fortunes of submissive millions, to adjust a scale of punishment to suit the atrocity of guilt, or to provide for the reformation of character. We may look in vain among the populous and refined nations, that once flourished in the fairest portions of Asia, for any exceptions to this remark worthy of consideration. Ancient India, so renowned for her civilization, her wealth, her ingenuity, her arts and her sciences, and filled, as she is, with the wrecks of power and splendor, was cruel in her administration of justice; and one of the earliest historians induces us to believe, that crimes were punished with that severity that destroys all proportion between the punishment and the aggression.\* The laws of the most polished states of Greece, not excepting Athens, when taken as a body, were grossly defective; (b) and during the most illustrious ages of

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\* "Punishment" (according to a striking personification in the Hindoo Code) "is the magistrate; punishment is the inspirer of terror; punishment is the nourisher of subjects; punishment is the defender from calamity; punishment is the guardian of those who sleep; punishment, with a black aspect and a red eye, terrifies the guilty." Rob. Disqui. on India.

(b) The Spartans were a martial and sanguinary people, and under the semblance of a Republic, evinced a spirit of arbitrary government and punished crimes with an unsparing vengeance. Tum vero apud multos populos et dominus in servos et parentibus in liberos mansit jus puniendi plenum, etiam ad mortem usque sic Sparta Ephoris licuit civem occidere extra iudicium. Gro.

the Roman Commonwealth, inflictions for offences indicated the triumph of military ferocity and summary revenge, rather than the adoption of mild, just, and rational laws, to restrain and prevent the commission of offences. The conquerors of the world were too intent on the subjugation of mankind, to settle nice and refined rules of human conduct, and to restrain the evil propensities of a populous community, by prudent, sound, and effective restraints.

While the civil law presents us with a system of rules in relation to the rights of persons and the rights of things, which deserve admiration; while private wrongs and their remedies are defined with a subtlety, and an exactness, that in many respects, may still challenge competition; that portion of it which falls under the head of Criminal Jurisprudence, presents a dark, cruel and implacable character. Punishments were disproportionate to offences, as well as relatively defective in their graduation; the accused was not confronted with the accuser; trial by jury was unknown; and the means of ascertaining the perpetration of crimes, rigorous, partial and unjust. The rack, the wheel, torture, crucifixion, and many other barbarous expedients, were common in the treatment of culprits. (c)

In looking into the Feudal laws, we look into the operations of a vast military system, where the field, and not the forum—where the sword of conquest, and not the scales of justice, is most perceptible. Single combat, the ordeal by fire and water, and the extinguishment of public offences by pecuniary compensation, distinguish its history.

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(c) The whole front of Roman Criminal Law, presents nothing but odious lines of sanguinary horrors, where every step of the Legislature can be traced in blood. The iron crown, the agonizing wheel, the bed of torture, present themselves to the abhorrent eye, on every side; their ultimate punishments, savage in their nature, and foreign to their end, which is example, and not the pain of the individual. Delaceration by wild beasts, protrusion from the Tarpeian Rock, immersion, crucifixion and scourging to death, are less shocking in narration to our feelings, than the previous engines used to extort confession from the prisoner, and to load with guilt the unfortunate object of imperial resentment. *Brown's Civ. and Adm. Law*, p. 44, V. f.

As we turn from this offspring of fierce and barbarous ages to the Canon law, that was principally composed from the decrees of Ecclesiastical councils, the edicts and decretals of the Pope, and the writings of the Papal Fathers and moulded to the exigencies of a great spiritual empire, by the subtlety and adroitness of the ecclesiastics and the commands of the chief Pontiff, we find little worthy of commendation amid the excommunications, anathemas, censures, degradations, forfeitures, and other similar resorts, which formed the main reliance for the prevention of public offences. The overt sale of indulgencies to commit crimes of the darkest nature, not excepting robbery, arson and murder, throughout the papal dominions, in the 16th century, went far to produce the overthrow of that power, which, from the vatican, overawed the kings and nations of the earth, affords a striking comment on this point.

The practice of expiating crimes by a specific recompence, seems to have been a favorite remedy in many periods of society. Homer incidentally mentions in his *Illiad*, that in ancient Troy, even murder, the blackest of offences, was punished by fine, and this information is again repeated in his description of the shield of Achilles. Tacitus tells us that among the ancient Germans, injuries were atoned for by compensation, and homicide had its price, which, when once paid, appeased the vengeance of relations and friends. The Salic law settled various prices for different kinds of crimes ; and, according to Hume, among the anglo Saxons, the forfeiture for killing a king, a bishop and alderman, a thane, a sheriff, a clergyman or a peasant, was settled by law, in the coin of the times. Not only was the aggressor compelled to pay, but the relations and parties injured, obliged to accept, of the penalty incurred. Blackstone informs us, that formerly in Ireland, in case of murder, the Brehon or Judge was authorized and accustomed to compound between the murderer and the friends of the deceased, in a manner peculiar to that country. The *lex talionis* or the law of retaliation, in case of corporeal injuries, has also been a prevailing feature in the criminal systems of many civilized nations, and



one deformity of person, when the effect of violence has been compensated by visiting the like mark and suffering on the person of another, the offender. Among the Jews, the Egyptians, and the Athenians, this rule of punishment was adopted in certain cases.

When the nations of the European continent, emerged from the barbarism of the dark ages, the civil law which had slumbered in obscurity for centuries, awoke with the restoration of the arts and the sciences. It became the foundation of national law in Europe, and the municipal law of many countries, under the limitation of local customs and ordinances. Its qualified dominion is apparent, as we look into the histories of Germany, Holland, France, Italy, Portugal, Spain, and some other states. In criminal proceedings, the process, as well as the rules and discriminations of the civil law, were in a great degree followed. Inquisition, denunciation, accusation, imprisonment, the oath of purgation, and the rack, were adopted. The writer before alluded to, (*d*) has forcibly remarked that there is scarcely an abuse of the criminal law, which in the last or preceding centuries drew down on its perversers the vengeance of an injured people, that was not suggested by the despotic genius of declining Rome. Had the Corpus Juris Civilis, while it applied the principles of moral rectitude to the extended variety of human concerns, been well adapted to the prevention of crimes, and the reform of criminals, far different would have been the science of Criminal Jurisprudence among modern civilized nations, at the present day.

For many centuries, after the revival of letters, Criminal Jurisprudence continued nearly stationary on the continent of Europe. The records of her criminal courts were deformed by cruel, rigorous, and impolitic sentences, and humanity was shocked and outraged, by awful and sanguinary punishments. Dungeons were multiplied and rendered the unmerited mansions of ignominy, sufferings and despair ; torture and the rack

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(*d*) Brown's Civ. and Adm. Law.

were applied with little discrimination, and no just relation was preserved between the offence and the punishment. Reasons of state and religious bigotry, added stimulus to the vindictive temper of sovereigns, courts, and tribunals. But during the 18th century a new and illustrious era broke upon the world. A combination of enlightened philosophers, united by the ties of genius, zeal and humanity, lifted the curtain which had so long concealed the horrors and abuses of different existing criminal codes, and opened the eyes of nations to the deep rooted and flagrant errors of the systems, which they sustained. Their appeals to public conviction, were effectual to no inconsiderable extent, and the moderation of some punishments and the abolition of others, succeeded. Torture was banished from Germany, Sweden, Saxony, Poland, Denmark, and Russia. France (*e*) enlightened and polished France, with a character illustrious for valor, for learning, and the arts, was among the last to follow this mild and praise-worthy example, if we except Spain and Portugal, whose annals are stained with blood, and whose moral condition requires deep and radical changes to reform the abuses of laws and customs. (*f*) The attempts made in Russia and in one of the Italian states to effect the permanent abrogation of all capital punishments, proceeded from this benevolent spirit for reformation.

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(*e*) The laws given to France by Napoleon reflect more credit on his public career than all his conquests. From the time his criminal code was adopted, crimes rapidly diminished. The following facts are taken from the report of the Minister of the Interior in 1813. In 1801 the population of France was 34 millions: that year produced 8500 criminal cases in which there were implicated 12,400 persons. In 1811 a population of 42 millions offered but 6000 criminal cases in which were implicated 8600 persons. In 1801, 3000 were sentenced; in 1811, 5,500; in 1801 there were 88 sentences to death, in 1811 only 392. Louis 18th has had the good sense to adopt the code of Napoleon, with a few alterations.

(*f*) The last question concerning torture was brought up in England in the reign of Charles the first by the Bishop of London in the case of Felton, for the murder of the Duke of Buckingham. It was introduced in the time of Henry the sixth. In the case here mentioned, the 12 Judges unanimously decided that it was contrary to the laws of England. Fos. C. Lew. 244.



It is with regret that we are here compelled to advert to England, with the deepest sentiments of reprehension. While she justly boasts of a system of jurisprudence in civil transactions, that applies to all the exigencies of civilized society, that guards and secures all the rights, incident to a state of public and private security, and one that is founded on the broad basis of utility, her criminal code presents us with a melancholy spectacle of cruelty, error, and neglect. Not only is it inadequate to the ends which it has been designed to accomplish; but it is productive of the very evils which it would remedy. The land of Coke, of Hale, of Foster and Mansfield, whose powerful and comprehensive minds extended the boundaries of legal science, and enriched and adorned it with truths and principles that were drawn from the depths of human reason, at this late day retains a system of laws that awards death for about two hundred offences, and that draws no distinction between the most atrocious murders and the stealing of a guinea, or the cutting down a forest tree.

We cannot conclude these remarks on the subject under consideration, with more propriety than by adopting the judicious observations of the learned and elegant Commentator on the laws of England. "In proportion to the importance of criminal law, ought also to be the care and attention of the Legislature in properly forming and enforcing it. It should be founded upon principles that are permanent, uniform, and universal; and always conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind, though it sometimes (provided there be no transgression of these external boundaries) may be modified, narrowed or enlarged, according to the local or occasional necessities of the state which it is meant to govern. And yet either from a want of attention to these principles, in the first concoction of the laws, and adopting in their stead the impetuous dictates of avarice, ambition and revenge, from retaining the discordant political regulations, which successive conquerors or factions have established, in the various revolutions of government; from giving a lasting effica-

cy to sanctions that were intended to be temporary, and made (as Lord Bacon expresses it) merely upon the spur of the occasion; or from, lastly, too hastily employing such means as are greatly disproportionate to their end, in order to check the progress of some very prevalent offence; from some, or from all of these causes, it hath happened that the Criminal Law is in every country of Europe, more rude and imperfect than the civil. I shall not here enter into any minute inquiries concerning the local constitutions of other nations: the inhumanity and mistaken policy of which have been sufficiently pointed out by ingenious writers of their own. But even with us, in England where our crown law is with justice supposed to be more nearly advanced to perfection; where crimes are more accurately defined, and penalties less uncertain and arbitrary; where all our accusations are public, and our trials in the face of the world; where torture is unknown, and every delinquent is tried by such of his equals, against whom he can form no exception nor even a personal dislike: even here we shall occasionally find room to remark some particulars that seem to want revision and amendment." (h)

From this partial sketch concerning the Criminal Jurisprudence of other countries, we turn to the United States. We turn to our country too, with those grateful emotions that are inspired by just causes of self-gratulation. No country on the face of the globe, of the extent and population of the American nation, presents a criminal system so mild, so rational, and so well proportioned to its ends as ours. It attracts admiration among the most polished states of the world, receives the eulogiums of philosophers, and philanthropists, and with our free and popular institutions, and with the sedulous attention of wise legislators, may, ere long, command the imitation of older and more powerful empires. Strong moral causes have contributed to the contrast which we display between ourselves and other nations, in this respect. Many of the first settlers of this country were

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(h) Black. Com. Vol. 4, p. 3.

men of enlarged views and vigorous minds ; many had left the shores of the other continent with a spirit of free enquiry and with a repugnance to irrational and sanguinary laws of every description. They came to a land, where the theatre of experiment was boundless. The relations of civil society were few and simple, and the complex abuses of long existing systems, in social order, were unknown. Some bold advances towards the adoption of a mild and temperate Criminal Code, were made before the Revolution ; but it was that great and momentous event which divested the monuments of European polity and jurisprudence of a false veneration, that expanded the public mind to a more acute, comprehensive and enlightened view of public rights and their security. In the Constitution of the United States, as well as in the several State Constitutions, constant regard is paid to the preservation of life and the security of fundamental principles. (g) The statutes of our different Legislatures, which followed the establishment of the national government, breathed a spirit of mildness and humanity, unknown to the nations of Europe. Public investigation was unshackled, and the public mind susceptible of new and deep convictions, upon subjects connected with the general interest, and the moral condition of the community. The writings of eminent advocates on the other side of the Atlantic for mild punishments, met with an ardent admiration. Many able and luminous disquisitions were written in this country, to advance the triumph of humane laws, and in some places associations of distinguished men were formed for the same purpose.

From these, and other kindred causes, arose the **PENITENTIARY SYSTEM** in the United States. It was the offspring of this country, and established on the broad principles of humanity. It was believed by its founders, that sanguinary punishments were not the most subservient to the ends of criminal justice, and that a system of laws that would tend to give a mo-

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(g) See Appendix (A) where those parts of the state Constitutions, relating to this subject, are given in one view.



ral dominion over the mind and bring it to a sense of its errors and turpitude, would prove more efficacious in preventing offences, than severe corporeal inflictions: that a system of laws which should prescribe confinement, hard labour, and moral discipline and instruction, would accomplish this purpose, and send forth convicts at the termination of their confinement, as useful members of society.

Before the Committee proceed, to give their views of the tendency, defects and reform of the Penitentiary System in this country, a brief sketch of its rise and progress may not be unproductive of benefit.

To William Penn, a name venerable and distinguished in the history of the new world, and one which will ever be associated with the recollection of ardent and successful efforts to improve the condition of mankind, may be traced the first steps towards that reformation in Penal jurisprudence to which we have alluded. The British government appears to have been anxious to extend her Penal laws, or at least the spirit of them, to her North-American Colonies. In the Royal Charter, granted to the founder of Pennsylvania, by Charles II. it is directed that the laws of the colony, in relation to felonies, should bear a similitude to those of the mother country; and even the future Provincial Legislatures were constrained to conform to the British system in their future enactments. But William Penn was a man of firm purpose, of strong mental powers, and of an original cast of mind. He thought with freedom on every subject, and his acts comported with his conclusions. He set at defiance the arbitrary injunctions in the Royal Charter relating to the punishment of crimes. First he abolished forfeitures in cases of suicide, and the deodands which followed the perpetration of murder. He then formed an independent Criminal Code, in which capital punishment for robbery, burglary, arson, rape, forgery, and levying war against the governor, was abolished, and alone retained in cases of homicide. Imprisonment, with hard labour, and in some instances the infliction of corporeal punishment were substituted. In trials for murder, where the

jury returned a verdict of guilty, the record of conviction was sent up to the Executive for supervision. This Code, worthy of one of the greatest legislators of the new world or the old, was transmitted to England and rejected by Queen Ann and her council. But the Colonial government conducted with a noble resolution, and still retained it in defiance of royal displeasure, until 1718, with the most salutary effects. Under the reign of George I. after much trouble and confusion in the Colony, the mild system of William Penn was surrendered under many aggravating circumstances, in which the hand of oppression is too visibly seen. A new Criminal Code was given to Pennsylvania, which, with subsequent additions, rendered sixteen species of crime punishable with death; also extending capital punishment to all cases of felony on second conviction, excepting larceny. No further change ensued, until the Revolution. That august event burst the fetters of colonial law. In the Constitution of Pennsylvania, framed in 1776, the Legislature is ordered "to reform the Penal laws—to make punishments less sanguinary, and, in some cases, more proportionate to the offence." In 1786, a new Criminal Code was created, and capital punishment was retained in four of the highest felonies—treason, murder, rape, and arson. But what derogated altogether from its merits, was the infliction of severe corporeal punishment, by whipping in public, and by compulsion to hard labour with the head shaved, and with other external indignities. The tendency of this system was obvious. It roused the strongest feeling of public aversion, and elicited the censures of such men as Benjamin Franklin, Benjamin Rush, and William Bradford.—These personages will be ranked, to the close of time, among the ornaments of our species, and among the benefactors of our race. Caleb Lowndes of the society of Friends, whose biography is the history of benevolence, displayed in its most simple and effective character, aided with unreserved ardour in the attempts at reformation. In 1790, a change took place in the Penal laws of that state. The State Prison at Philadelphia was erected. Here commenced the Penitentiary System in the Uni-



ted States, which has now been in existence about thirty years. As we shall mention, the peculiar construction of the Penitentiaries in this country, in their proper order and in a succinct manner, nothing need be said here in relation to the internal arrangement and police of the one now mentioned. We are now showing the rise, and not the defects of the system.

In 1794, the example of Philadelphia, awakened the philanthropy of several citizens of the city and state of New-York. Previous to this period, no views on the subject of the Penitentiary System were entertained in this section of the union. During the year here mentioned, General Schuyler and Thomas Eddy, without any other business, visited the Philadelphia prison, for the purpose of forming a more accurate knowledge of its tendency, its structure, and its internal arrangements. The view made a favourable impression on their minds, and on their return to New-York, General Schuyler, who was one of the most liberal minded, enterprising, and illustrious founders of this Commonwealth, and who was then in the senate of this state, immediately drafted a law for the erection of a Penitentiary in the city of New-York. This bill "for making alterations in the criminal law of this state, and the erecting of State Prisons," was brought forward, and ably and successfully sustained by Ambrose Spencer, the present Chief Justice of the state of New-York, and finally became a law on the 26th of March, 1796. (j) By this law, two State Prisons were directed to be established—one at New-York, and one at Albany. The idea of a Penitentiary at Albany, was afterwards abandoned, and the whole appropriation expended in New-York, under a commission, consisting of Matthew Clarkson, John Murray, jun. John Watts, Thomas Eddy, and Isaac Stoutenburgh. With the passage of the law here alluded to, an important amelioration took place in our criminal code. Previous to the year 1796, there were no less than sixteen species of crime, punishable with death, in this

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(j) Vide Journals Sen. and account of the Penitentiary House in the City of New-York.

state. Corporeal punishment was resorted to, and in many cases, where felonies were not capital, they became so, on their second commission. By the law 1796, providing for the erection of the New-York Penitentiary, capital punishments were abolished in fourteen cases, for imprisonment during life, or for a shorter period, and only retained for treason and homicide. This reform has since been advanced still further ; but some laudable attempts have failed of success. In 1804, eight years after the erection of the New-York Penitentiary, Thomas Eddy framed a law "for erecting a Prison for solitary confinement in the city of New-York." This was to contain sixty cells of the dimensions of 7 feet by 8, where all convicts for petit larceny, and other minor offences, were to be confined for a short period in solitude, without labour, and on a low diet. Had this plan succeeded, it was contemplated to divide the state into districts, and to erect a similar prison in each section. By an alteration in the above bill, the erection of the Prison was left to the discretion of the Corporation of the City of New-York, who approved of the system, but never executed the law. Good effects were however produced by its passage. A copy of it was transmitted to Mr. Colquhoun, the author of the Police of London, the Police of the River Thames, and other celebrated works, accompanied by a letter to the same distinguished person, from Thomas Eddy. These were handed to Lord Sidmouth, then Secretary of the Home Department, who decidedly approved of the principles which it adopted ; and in a few years afterwards, prisons were constructed in England upon the plan which it embraced. On this subject more will be said in the sequel.

The State Prison in Richmond in the Commonwealth of Virginia, was erected in the year 1800. Convicts for homicide in the second degree, manslaughter, rape, grand and petit larceny, burglary, robbery, forgery, and other inferior crimes, are doomed to this Penitentiary. The State Prison in Charlestown, in the Commonwealth of Massachusetts, was erected in 1804 with a correspondent change in the penal code of the state. The

State Prison at Baltimore, in the State of Maryland, was erected in 1811. The State Prison at Windsor in the State of Vermont, was erected in the year 1808. The State Prison at Concord, in the State of New-Hampshire, was finished about 1812, and the one at Cincinnati, in the State of Ohio, was established in 1816. There are also, Penitentiaries in New-Jersey, Tennessee, and Kentucky. The Penitentiary in the State of Connecticut, differs from all others in the United States, and was not entirely the effect of the system commenced in Pennsylvania. We have not, therefore, regarded its priority in point of age. About a century ago a company of German miners, opened what was called the Copper, or Simsbury mines. The excavation created by procuring the ore is about 70 feet in its greatest depth, and about one hundred feet in length, varying from ten to fifty feet in width, and from five to fourteen feet in length. About the year 1778, the state made use of this cavern as a prison for felons. In 1790, it was rendered a State Prison for convicts, by the Legislature. The necessary walls, buildings and workshops, were erected, during the same year. No female prisoners are ever sent here, and a female convict is indeed a rare spectacle in this state ; they are sent to the country work house, if ever arraigned and convicted. Burglary, arson, horse-stealing, rape and forgery, are the crimes punished by sentence to this place. Previous to the period when this prison was prepared, these offences were punished by death, cropping the ears, branding on the forehead, whipping in public, or the pillory. It may therefore be said to have produced a change in the criminal code of Connecticut, which has received the long and constant sanction of public approbation up to this day. (*k*)

These we believe include all the Penitentiaries that have been erected in the United States, with the exception of one at Pittsburgh in the State of Pennsylvania, and one at Auburn in the State of New-York, which we shall notice in the sequel.

We have now given a sketch of the rise and progress of the

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(*k*) Vide Mr. Shelden's letter to Gov. Woolcot in the appendix and Gov. W's. letter also,



Penitentiary System of the United States. It was first introduced, and has since been cherished, for the important purpose of preventing crimes and offences, and for reforming convicts. The grand question which now arises, is, has the system answered the expectations of its founders and advocates? To this inquiry but one answer can be given.—It has not. Two other inquiries, then, naturally arise: First, Why has the Penitentiary System failed of producing its expected ends? Secondly, Can it be so modified and improved, as to produce the results expected by its founders?

We shall contend that the Penitentiary System is a practical System, and that its present defects are separable from it and can be eradicated. We must still cherish the firm and unshaken conviction, that it is not beyond the bounds of human effort to devise a system of punishment, that will combine in its tendency, the prevention of crimes, and the reform of convicts. We do not believe that civilization has yet effected all the moral changes and improvements, that can be wrought in the constitution of human society, or that laws and government have been carried to the utmost limits of perfection. Nor do we admit, that even in the Penitentiary System, there has been that total failure which some have been pleased to assign, although from the perversion of its principles, it has disappointed the hopes of its early friends.

The divisions of this Report will naturally fall under the following heads:

- I. What are the defects of the Penitentiary System of the United States, and why has it failed to answer the objects of its establishment?
- II. In what manner can the defects be remedied, and how can the System be rendered effectual?
- III. If the Penitentiary System is to be abandoned in the United States, to what substitute shall we resort?

The Committee confidently hope that the investigation of these problems will result in a firm conviction that it is our duty to adhere to the Penitentiary System in the United States, and

to look to it, under new improvements, as a national blessing, when compared with any other system of criminal law that can succeed it

I. The present defects of the Penitentiary System may be included in this enumeration :

1. Errors in the construction of our prisons.
2. Want of classification among the convicts.
3. Want of room.
4. The too frequent intervention of pardons.
5. Want of a school for Juvenile offenders, and of a system of moral and religious instruction.
6. The too frequent change of Superintendants and Governors.
7. Want of proper diet.
8. Too much regard to revenue.

1. The errors in the construction of our State Prisons, have more than once been perceived and pointed out, by those who have cherished a deep interest in the improvement and perfection of the Penal Codes of this country. The place of confinement of the Philadelphia Prison occupies a lot of 400 feet by 200 feet, on which is erected a large stone building, 184 feet long on the north side, two stories high, divided into rooms of equal dimensions of 20 by 18 feet. The New-York Prison is 204 feet long, a wing projecting from each end, and from these wings two other smaller wings. The whole fabrick is of the Doric order, and contains 54 rooms, 12 feet by 18, for prisoners, sufficient for the accommodation of 8 persons each. The Massachusetts Penitentiary consists of a principal building, 66 feet long and 28 feet wide, containing five stories and two wings, each 67 feet long and 44 wide, making in the whole a building of 200 feet. The rooms of the two upper stories are 17 feet by 11, and the cells of the two lower stories are 11 feet by 8.

The cells in the ground story are assigned to convicts for solitary confinement, and for violating the internal police of the prison. It is unnecessary to describe the internal and external structure of all the Penitentiaries in the United States. The description of the oldest already mentioned may be taken as a



data. The Virginia, Maryland, New-Hampshire, Vermont and Ohio Prisons, do not so deviate from them in any particular, as to redeem the System from the errors which have been enumerated, and which we shall illustrate. The rooms are all too large, and none of the prisons constructed on a plan to prevent the constant intercourse of criminals or to divide and keep them in distinct and proper classes.

Here is one of the fundamental errors, that has defeated the grand object of the Penitentiary System in the United States. This is the greatest of all the defects that time and experience have revealed, in the lapse of thirty years. It accommodates the internal police of our prisons, to the ruling propensities of human nature, and gives indulgence to the leading passions and inclinations of man. It baffles the adoption of all other rules and principles of discipline and organization, and we might as well attempt to raise a superstructure without a foundation, as to make efforts for the perfection of a Criminal Code, while its first requisite is wholly wanting.

The erroneous construction of our Penitentiaries, has not, until recently, attracted that deep attention throughout the country, which it deserves. For several years, every thing relating to the System, was viewed as a matter of experiment, and so far as it was adopted, it proved so much superior in its moral consequences, to the old sanguinary codes of the colonies, that the gain was deemed matter of congratulation, although the grand end was not attained. Besides, the number of convicts was much smaller than it is at present, the superintendants were frequently changed, the chain of observation was broken, and if the sagacity of observation detected defects, they were not so presented to the Legislatures of the different sections of the Union, as to awaken their apprehensions. Hence one state after another, each having distinct municipal laws, and distinct constitutions of government, went on, imitating Pennsylvania and New-York, in the erection of prisons, and adopted the errors and vices of the System, without an anticipation of disastrous consequences. The last prison on the old plan was erected at Cincinnati, in the state of Ohio, in 1816.

God has planted in the bosom of man those passions and emotions that constrain him to assimilate his condition to that of his species, and to cultivate those relations, that produce reciprocity of feeling. (1) Abstractedly speaking, his nature is social; but when born and cherished in the bosom of civilization, and when his faculties are called forth, and his leading propensities gratified, by constant intercourse, and where the pleasures of society become essential to his comfort and his happiness, the heaviest curse that can fall upon him, is, complete and unceasing solitude. His fortitude may endure and triumph over the infliction of corporal sufferings; his want of shame may set at defiance the scorn of the world, as he undergoes the ignominy of public disgrace; his desperation may enable him to look coldly and fearlessly on capital punishment; but that condition that cuts him off from the world and all its endearments and attractions; that judgment of law that proves the grave of every social blessing and allurements, and leaves the mind to prey upon itself, and mixes bitterness and reproach with every remembrance; that doom which places before the eye, one long, dark and unchanging scene of seclusion that can never be broken by the human voice, lighted up by a smile of joy, nor meliorated by a tear of sympathy, is more appalling, in the train of reflection, than all the terrors of dissolution. If exile from our native country, although it may place us in the midst of the most refined and polished society in foreign countries, and carry with it, as it frequently does, the consolation derived from noble struggles and elevated devotions to a pure cause, frequently breaks the proudest spirit and shakes the firmest resolution, and is view-

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(1) Two thousand years have not weakened the force of the beautiful idea expressed by Aristotle, when he said, that from the circumstance of man's being endowed with the powers of speech, he could prove his ruling propensity for social existence. Grotius has repeated it in the following remarks: *homini vero perfectæ ætatis, cum circa similia similiter agere norit cum societatis appetitu eccellente, cujus peculiare solus inter animantes instrumentum habet sermonem, inesse etiam facultatem sciendi agendique, secundum generalia præcepta, par est, intelligi, cui quæ conveniunt ea jam sunt non omnium quidem animantium sed humanæ naturæ congruentia.*

ed as an act of outlawry from the enjoyments of our existence ; what must be that exile from all human kind that is the result of vice, profligacy and crimes ; that carries with it the torture of self-condemnation and the reprehension of the world ; that cannot be soothed by the enthusiasm of principle, nor mitigated by the distant applause of posterity ? The evening sun sets but to rise on the same dark scene of mental suffering : the mind is driven to rely upon its own resources : the pleasures of inventive genius are withdrawn, and the poignancy of deep and settled repentance is uninterrupted. This is not theory, that no practice has sanctioned. It is founded on the deepest principles of our nature, all round the globe, where civilization has cast the lines and boundaries of her empire.

And indeed it may perhaps be said with truth, that the social attractions act stronger on depraved and desperate persons, than on those of a correct and virtuous character. What pleasures can pertain to persons destitute of all moral obligations but the indulgence of those passions that can alone be gratified by a communion with others ? Who plunders the property of another, who seeks gain by violating the Penal laws, to enjoy the fruits of aggression in solitude ? Mark the murderer, the pirate, the burglar, the thief, and the swindler—whither do they repair with the acquisition of their crimes ? They go to the bosom of that abandoned circle, which is composed of wretches like themselves. They derive a countenance and support from those, who, like themselves, have ceased to regard moral ties, and who adhere to no common bond but that which holds together a combination, erected against the peace, the rights and the security of the community. It is in the refuge afforded by such associations, that reflection is precluded, and conscience vanquished. It is in such asylums of infamy, that the most depraved can find vindicators. In the ebullitions of a convulsive joy at the success and triumphs of guilt, or in the cool and deliberate councils for the prosecution of fresh depredations, we may expect the annihilation of every wholesome and honorable restraint, and the banishment of contrition and remorse.



Let us, for instance, take ten or twenty abandoned felons, and give them their choice either to go into complete solitude, and be comfortably cloathed and fed, and live in total idleness, or to be placed in the society of one hundred honest mechanics with whom they should live and labour and be comfortable, or be placed in the society of two or three hundred criminals, like themselves, destitute of honesty, and destitute of shame : can any rational person doubt the alternative which would be embraced ? Solitude would present nothing but horror ; the company of industrious and upright men, would be disgusting ; but the association with knaves and villains, would be a place holding out the most pleasing anticipations.

With these prefatory remarks, and with the principles of conduct, and thinking which we have pointed out, fully in mind, let us take a view of the internal state of our Penitentiaries.

Are our Penitentiaries places which are dreaded by convicts ? Is the anticipation of being immured within their walls, generally productive of terror ? The observation and experience of years convince us to the contrary. Our Penitentiaries are communities by themselves. They contain so many societies of men of the same feelings, of similar principles, and like dispositions, erected by force of statute. They are so many commonwealths, insulated from the rest of mankind. Look at the Penitentiaries of Pennsylvania, New-York, Massachusetts, and the other states ; what is the spectacle which they present ? Several hundred convicts are mingled together, without regard to age, atrocity of guilt, or prospect of reform. All the characteristics of social intercourse are presented. There is neither shame nor repentance. All have been placed there by the arm of justice, for violating the laws of the land, and there is but little ground for contrast or reproach. The members of these little communities are comfortably clothed, comfortably fed, condemned to moderate labour, and easy tasks, permitted to have their hours of ease and recreation, indulged in talking over their exploits in the paths of guilt, suffered to form new schemes for future exe-

cution, and to wear away their term of service, under circumstances calculated to deprive it of every salutary effect. This state of things is truly appalling, and we cannot draw a picture in more vivid colours, than the one which is presented, of the oldest State Prison in the union, by the report on the Penitentiary System in the State of Pennsylvanian, on the 27th of January, 1821. "It seems," says the Report, "to be generally admitted, that the mode at present in the Penitentiary, does not reform the prisoner. It was intended to be a school of reformation, but it is now a school of vice. It cannot be otherwise, where so many depraved beings are crowded together, without the means of classification or of adequate employment. There were in confinement on the first instant, four hundred and ninety-four men, and forty women, convicts. A community of interest and design is excited among them, and instead of reformation, ruin is the general result." (*m*)

We must then draw the conclusion that the construction of our Penitentiaries is wholly defective, and calculated to defeat the object of the system. Large numbers of convicts are promiscuously crowded together : a sentence to the State Prison is not viewed with that terror that tends to prevent crimes ; the allurements and pleasures of social intercourse, are kept up ; the ignominy of punishment is forgotten ; and with many hundred criminals, the State Prison is viewed like the transportation to Botany Bay, by felons in Great Britain, as a welcome asylum.

2. The next error which we shall notice, as pertaining to our Penitentiaries, is the entire want of classification, if we except the division of convicts into sexes. Men and women are kept separately and here the rule of discrimination stops. This is indeed the natural consequence of the evil manner in which our prisons are constructed ; yet defective as they are in this respect, it would be practicable, in many cases, to prosecute some more distinction among felons than appears at the present time.

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(*m*) Report to Pennsylvania Senate, by Mr. Raguet, Jan. 1821, and letter of Mr. Miercken.



We know of no prison in the United States, where the convicts are divided into classes, and kept in classes, with a reference to their own good. When once placed within the precincts of the Penitentiary, the grade of the offence, the age, the disposition, the indications of repentance, or the proof of their hardihood are all forgotten, and they comprise one great aggregate of offenders. The prevailing object is to make their labour as productive as possible, and to this object every consideration seems subservient. Here the most obdurate and experienced offender who has grown grey in the perpetration of crimes, and who has become familiar with the walls and discipline of prisons, who with equal thoughtlessness and hardihood, contemns the laws of God and man, is seen the daily, and in many prisons, the nightly companion of the unfortunate youth, who, from neglect of parental regard and watchfulness the want of timely education, and the inculcations of correct early habits, have committed a single offence of a minor grade, and has been sentenced for the shortest term the law allows. Offenders for manslaughter, burglary, larceny, counterfeiting, and swindling, the felon of sixty and the felon of fifteen,—he who has shed man's blood, or put the midnight torch to his neighbour's dwelling, and threatened the existences of a whole family, and he who has passed a counterfeit bank note of five dollars, are doomed to a condition, where they are placed together upon equality, and become daily associates. Can we rationally talk of the reform of convicts under such circumstances? What is man? The creature of habit. We assert not the doctrine that all men are naturally possessed with an equal love of virtue and an equal abhorrence of vice; but we do assert that habits of thought, and habits of action, create settled rules of conduct that are grounded on moral excellence—fortify the character against all temptation,—and that they may also destroy the last trait of honesty, truth and rectitude, and render character the blackest type of human guilt. How many crimes, how many misfortunes, how many sacrifices of worth and promise, have been produced by indiscreet and vicious associations, that existed before men have violated the law, and fallen under the

sentence, of a criminal tribunal; and yet by means of our Penitentiaries we establish in the execution of our laws, the most desperate, profligate, and dangerous association, that can well be established by human invention, and expect that such a policy will prevent the perpetration of crimes, present a salutary example, and restore those who compose them, reclaimed and regenerated to the bosom of society ! A State Prison must necessarily be filled with every description of offenders, from him who is the least obnoxious to the laws, to him who is the most flagrant aggressor. Felons, according to the ordinary principles of our nature, will assimilate in moral character by intercourse ; and the standard which will be approached and adopted, will not be the lowest, but the highest degree of turpitude. The hardened convict will maintain his abandoned principles, and the novice in guilt will become his pupil and his convert. The greater offender will not go to the lesser ; the tendency is the reverse. It requires no reflection to perceive, that without classification, our Penitentiaries, instead of preventing crimes, and reforming convicts, directly promote crimes, and augment the moral baseness of convicts. They are so many schools of vice—they are so many seminaries to impart lessons and maxims, calculated to banish legal restraints, moral considerations, pride of character, and self-regard. It is notorious that, in all public prisons, their tenants soon adopt certain principles of government and conduct, among themselves, and that they soon assume the form and semblance of a distinct and independent community. They have their watchwords, their technical terms, their peculiar language, and their causes and objects of emulation. Can we see any thing in this view, but consequences the most serious and alarming ? Who fill our Penitentiaries ? Take those of Richmond, Baltimore, Philadelphia, New-York, and Boston—and we shall find their tenants composed of renegadoes from England, Ireland, Scotland, France, Italy, and other parts of the continent of Europe, united to convicts who are natives of the United States. Many of them were finished adepts before they reached our shores, and united to such of our own citizens as are

equally well skilled in the perpetrations of crimes, they form a combination every way calculated to extirpate the last principle of honesty in the human breast. With this congregation of robbers, burglars, thieves, counterfeiters, and swindlers, of every description, we shut up all classes of minor offenders, and they mingle together, for months and years, without distinction. Many of them are of respectable parentage, and have been decently, and sometimes well educated; their hold on the respect of the world is not entirely broken; the feelings of repentance and self-respect, are not extinguished;—and they have not withdrawn their eyes from the paths that lead to reform, and to restoration. Many of them possess dispositions that are easily swayed, and sensibilities that are easily excited by reason and truth, and under proper discipline, could be reclaimed and reformed. But can we rationally look for such results, when they are turned into a Penitentiary, with hundreds of criminals, who are daily rendered more wicked by example and precept? As to those State Prisons which have been erected in the interior of our country, they too have their desperate and hardened tenants, whose evil communications are palpably seen in the most baleful consequences. Let us ask any sagacious observer of human nature, unacquainted with the internal police of our Penitentiaries, to suggest a school where the commitment of the most pernicious crimes could be taught with the most effect; could he select a place more fertile, in the most pernicious results, than the indiscriminate society of knaves and villains of all ages and degrees of guilt, with strong and furious passions, hardy constitutions, and sound health, comfortably clothed, sumptuously fed, and left to the performance of trifling duties? Your Committee are not indulging in speculation. They say that our Penitentiaries are destitute of the classification of convicts, of any regard to the degree of individual guilt, and any regard to age—and without any regard to reclamation. We say that an indiscriminate intercourse exists among the convicts, and that the different shades of guilt and atrocity are blended together. We say that both, by day and by night, with few or no excep-



tions, they communicate with each other;—that the most pernicious principles may be inculcated, the worst of passions inflamed, the most profligate maxims be rendered familiar—and all shame, honesty, and self respect be destroyed. We appeal to any Penitentiary in the United States, to show us the moral misapplication of this description. If there are exceptions, they are in some of the new Penitentiaries, where the prisoners are few, and the evils here spoken of, not yet palpably developed. The State Prison in Ohio, erected five years ago, already severely experiences the truth of what we here lay down. Such has been the information derived by the Chairman of the Committee, in a personal conversation with one of the most distinguished, and public spirited men of that State.

We shall here adduce some proofs to illustrate the assertions in which we have indulged. We could produce more than will be referred to, were it essential and requisite. We shall begin with Pennsylvania, and quote the Report to the Senate of that State, before referred to. “There were in confinement,” says that well written and lucid document, “on the first of January, 1821, four hundred and twenty-four men, and forty women convicts. For want of room to separate them, the young associate with the old offenders: the petty thief becomes the pupil of the highway robber; the beardless boy listens with delight to the well told tale of daring exploits, and hair-breadth escapes, of hoary headed villany, and from the experience of age derives instruction, which fits him to be a pest and terror to society. Community of interest and design is excited among them, and instead of reformation, ruin is the general result.”

“This is a short but melancholy picture; it is but faintly drawn, but it is sufficiently strong to excite attention in every benevolent mind. The Grand Juries of our district, have for years past, presented to the public a similar portrait of our once boasted Penitentiary, and the late Executive has very judiciously directed the attention of the Legislature of the State to the subject.” (n)

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(n) Report to Pennsylvania Legislature, and Mr. Mекреkin's letter.

We shall next refer to the Statistical View of the operation of the Penal Code of Pennsylvania, prepared and published by the Society for alleviating the miseries of public prisons. "So many," says this publication, "are crowded together in so small a space, and so much intermixed, the comparatively innocent with the guilty; the young offender, and often the disobedient servant or apprentice, with the most experienced and hardened culprit; that the institution already begins to assume the character of a European Prison, and a seminary for every vice, in which the unfortunate being who commits the first offence, and knows none of the arts of methodised villany, can scarcely avoid contamination, and leads to extreme depravity, and with which, from the insufficiency of room to form separate accommodations, he must be associated in his confinement." (o) We shall next cite the words of Mr. Hopkinson, whose celebrity as a lawyer and a statesman, give him a passport to the acquaintance of the American people. His whole letter will be found in the appendix. "So far" says he "from reformation having been the effect of the System as heretofore practised, one of its worst evils is, that by throwing a crowd of criminals together, necessarily of different degrees of depravity, they become equally wicked and corrupt, and skilled in the various contrivances to commit crimes and elude justice. It is a college for the education of men to prey upon society. A novice, who if kept from company worse than himself, might have been reclaimed from his first attempts, is here associated with old, hardened and skilful offenders; he hears with envy and admiration, the stories of their prowess and dexterity; his ambition is roused, his knowledge extended by these recitals, and every idea of repentance is scorned; every emotion of virtue, extinguished. Instances of this sort are numerous, both in the United States and in England. I consider this herding of criminals together, as a vital defect in the Penitentiary System" (p)

A letter, full of sound sense, from Bishop White, President

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(o) Statistical View.

(p) Mr. Hopkinson's letter in the App.

of the Philadelphia Society for alleviating the miseries of public prisons, whose persevering and benevolent efforts are well known, goes to prove the facts above stated. (q)

As we pass from the Philadelphia to the New-York Penitentiary, we find nothing but the strongest evidence to prove the total want of any judicious classification of prisoners. Our State Prison has been crowded for years.—Convicts of all ages, and all degrees of turpitude, have been placed together, and all the evil and fatal consequences of vicious communications have been exhibited. It was built to accommodate three hundred persons, and more than seven hundred have been confined in it at once—many of them foreigners from all the ends of the earth. Your Committee need appeal to no documents, to shew the total want of a proper division of convicts in our Penitentiary. The defect is well known to the whole community, and is as obvious to the eye, as the prison itself. Culprits come out far more depraved and desperate, than they were when they received their sentence. The young are advanced in the paths of guilt; the old, confirmed in their baseness; morals, instead of being improved, are broken down; conscience, instead of being restored to a tone of reproof, is blunted and banished. No statement of ours can be too strong on this point. The fact stands complete and conclusive.

The State Prison in Massachusetts forms no exception to the general want of classification. Unfortunately, the circulars addressed to several of the first men in Massachusetts, by your Committee, have not been answered or noticed in a single instance; we must therefore rely on that information which has been derived from other sources. We feel authorised to assert, that there has ever been a neglect of that division and separation of convicts, that discrimination between old and young offenders, and that prevention of evil communication, which constitutes the grand defect under consideration. We are, however, recently informed, that it is at present less to be apprehended in this case than formerly. (r)

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(q) See App.

(r) Vide North Am Review, No. 8, Oct. 1821.



Perhaps no Penitentiary in the United States has been managed with more wisdom, care and uniformity than the one in Virginia. Samuel P. Parsons, of the society of Friends, who has long been the Superintendent, and who, if any man has capacity and zeal to perfect the System, possesses them in an eminent degree, and who has spared no effort to accomplish the original end of the institution, informs us that the want of classification of convicts is one of the evils which have caused the partial disappointment of its friends and patrons. There is too much intercourse among the prisoners, too many sleep together, and the contagion of vice is apparent. (s)

The State Prison of New-Hampshire has been erected but for a few years. The number of felons is not great, and yet the want of a division into classes is already perceptible. Gov. Plumer, the late distinguished Chief Magistrate of the State, on whose sound and judicious opinion, the Committee place great reliance, and to which they shall again refer, observes that "effectual measures should be adopted, to separate, in the Penitentiary, old offenders from the young and inexperienced, otherwise the latter, instead of being reformed will become adepts in crimes; and when the term of their confinement expires, they will return to society, more wicked and abandoned, than when they left it." (t)

Judge Woodberry, of the New-Hampshire Supreme Court, remarks: "The prisoners, according to the enormity of their crimes should be classed, and marked with some distinctive badge. They should, during the day, be kept more quiet and secluded from either society or conversation, and during the night wholly separated from each other." (u)

The letter from the hon. Daniel Clusman one of the most distinguished lawyers in Vermont, and in New-England, and a careful and sound legislator, observes, when speaking of the Penitentiary in that state: "The prisoners are only exposed to

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(s) Vide Mr. Parson's letter in the app.

(t) Vide Gov. Plumer's letter in app.

(u) Vide Judge Woodberry's letter in app.

corruption; a young man who has been detected and punished for the the first crime he has committed, and who has no settled habits of vice, is confined with old and hardened offenders, and those will have an influence on the young mind. He will in a measure look up to them."

The Penitentiary in Maryland, and the one in Ohio, erected about six years ago, go on with an exhibition of the same radical defects, and although the State Prison in Connecticut is different from any other in the United States, yet Governor Wolcott remarks in his very interesting communication, which we shall more fully notice, "that it has been a defect in the establishment, that the means of discrimination between convicts of different degrees of enormity, do not sufficiently exist." (*v*) On this alarming error in the Penitentiary System, we trust that enough has been said in this place. Its existence and its tendency, require no further illustration here.

The want of room, is another defect that applies to several of the State Prisons, and is, in some measure, the result of their construction. In Philadelphia, New-York, Baltimore, and Charleston, it would have destroyed the ability to classify convicts, had it been a part of the penitentiary police to have resorted to this policy. It has produced another evil next to the one last mentioned if not still more fatal—the exercise of the pardoning power. In no state has this defect been so alarming and disastrous as in our own. The Judges of our Supreme Court have actually recommended convicts to pardon, and the Governor of the state has, in innumerable instances, granted pardons to make room for new criminals. Want of a place to secure new offenders, rendered this baneful state of things absolutely necessary if the laws were administered at all. (*w*) In Pennsylvania, the most serious difficulties have arisen from the want of more extensive accommodations, and Massachusetts, previous to the erection of the state of Maine, and its separation from the parent state, and an alteration of the Criminal Code,

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(*v*) See Gov. Wolcott's letter in the app.

(*w*) Report of Committee to New-York Senate, March 7, 1817.

that places young offenders in the County prisons, great disadvantages arose from the same cause. In New-York and Pennsylvania, these evils will be diminished hereafter, by the erection of new prisons, although they here deserve much consideration among the causes that have produced the practical failure of the State Prison System.

We now come to a defect, that has been one of the radical causes of disappointment in our Penitentiary System, and one whose existence will ever defeat the most perfect Criminal Code that human wisdom can frame. We refer to the frequent exercise of the pardoning power. This evil, although most deeply felt in all the states, has been endured with the most fatal results whenever the Penitentiary System has been tried on a large scale. It has been found, to the last degree, pernicious in Pennsylvania, New-York, and Massachusetts. Unless more caution is hereafter exercised with regard to this suspension of justice, we may as well close and abandon our Penitentiaries so far as prevention of crimes is concerned.

In every department of law, there are certain fundamental maxims, that truth, experience, and universal assent, render sacred and unquestionable. Thus all jurists and legislators adopt the principle, that the certainty of punishment is the prevention of crimes. This was a favourite feature in the writings of Beccaria. It was laid down by Sir Samuel Romily, one of the greatest lawyers which England ever had, that could punishment be reduced to absolute certainty, a very slight penalty, would prevent every crime that was the result of premeditation. And we might well ask, if any offence, of consequence, was ever committed where there was not a full conviction, in the mind of the perpetrator, that he should escape the grasp of justice? The felon does not weigh the gain of his deed, with the punishment which the law denounces against him, and strike the balance; but he connects together the acquisition and the belief of eluding justice. Would any man rob the mail of the United States if he knew that death was his certain doom? Would any man pass a five dollar bank note, if he knew that five years impris-



onment would be his destiny? No one can rationally pretend it. What then is the effect of granting frequent pardons? Does it not go directly to diminish the certainty of punishments? A pardon disarms the law, and is a destruction of punishment. If pardons are often granted, what is their consequence on the mind of public offenders? Not only do they calculate on the general belief of escape, but they reflect, if even that confidence should be ill-placed, they will be fit subjects of executive clemency, and thus is combined in their thoughts the double prospect of going unpunished. This, therefore, holds out a direct encouragement to the desperate and evil minded, and contravenes that vital requisite of every Criminal Code, on which the Marquis Beccarie, and every succeeding writer has laid so much stress. Besides, if the pardons are granted, without due discrimination, there is extreme and barefaced injustice in the policy; and it is a sound maxim in jurisprudence, as well as in morals, that he who attempts to punish another for offending against justice, should himself be just.

This is the way to render justice a mockery, and weaken the respect of the community for the laws. Four or five hundred convicts are confined in a Penitentiary: some for robbery, burglary and swindling, and some for passing a five dollar note or stealing a garment. The robber, the burglar and the swindler are pardoned, and he who passes the note or takes the garment are kept in for months and years. What must be the reflection of convicts on such an administration of justice? This is no speculation: the most notorious felons have again, and again, been pardoned from our Penitentiaries, while the young and inexperienced culprits, for committing crimes of comparative petty magnitude, are kept in for years. Is this the way to render our prisons places of reform and amendment? Is this the way to render law and justice sacred in the eye of criminals? One of the great objects of punishment, is said by many writers, to be example, and the restraining consequences to flow from it. Example, to be effectual, should be uniform. It should not be severe and desolating in one case, and wholly

destitute of force in another. What beneficial effect can we expect from this source, when it is doubtful who will and who will not suffer after sentence? When it is questionable, whether the most flagrant, or most excusable offender will endure the heaviest punishment? Reasoning is unnecessary to illustrate the ruinous consequences of this abuse of executive justice. It strikes at the root, and contravenes the ends of all Criminal Codes.

This evil has not been felt in all the states. Its consequences have been most apparent in the states where Penitentiaries were early resorted to, and what is more to be regretted, want of room for the confinement of convicts, and not a regard for the constraining appeals of clemency, has been the moving cause, which has led to its existence. The state of New-York has unfortunately furnished the most striking and melancholy proof of the correctness of our remarks, of any state in the confederacy. We shall here refer to a report of certain commissioners, appointed to examine into the State Prison, relative to its expenditures. This document remarks, that "the Judges of the Supreme court have been obliged to recommend for pardon, and the executive to exercise his constitutional power of pardoning, merely for the purpose of making room for the reception of new offenders. The sentence of the law must, in the first instance be complied with; the convict must be received in the prison, and put to labour; but before his term of service has half expired, it has been found indispensable to get rid of him in order to make room for others, under similar sentences. The consequence has been, that, while on the one hand those, whose dispositions and habits have prepared them for the perpetration of crime, have been encouraged to go on and commit their depredations in the hope of at least partial if not absolute impunity, (for that portion of the community, no doubt, perfectly understand the subject, and know well the calculation they may make upon it)—on the other, the institution has been subjected to the disadvantage of continual change; by the time one set of workmen have been taught to labour, and have been

qualified to make some return for the expense they have occasioned, they are discharged from confinement, and a new set substituted in their place. And thus all the inconvenience and expense of preparing them for usefulness is constantly borne, and all the advantages expected to result from it almost as uniformly relinquished. On referring to the reports for the five years which have been mentioned, it is found that within that period, seven hundred and forty convicts have been pardoned and only seventy-seven discharged by the expiration of their sentences. And the number of pardons within the year just ended, is stated by the inspectors to have been even greater, and more disproportionate to the number of other discharges than in any former year. Nor will the force of this fact be in any degree impaired, by a consideration of the moral effects of these pardons upon the convicts themselves. Of all those who have, within the above period, been committed for second and third offences, about two thirds have been discharged from their former sentences by pardon. And of twenty-three, the whole number convicted of second and third offences in the year last reported, (1815) twenty had been previously pardoned, and only three discharged by the ordinary course of law." (x)

Since this report was made, some mitigation of the evil has existed, in consequence of the advantages afforded by the Auburn Penitentiary. But still the evil is among us. Great numbers are annually pardoned out of the State Prison in the city of New-York, on the grounds stated in the report alluded to, and sometimes we fear from a mistaken policy of displaying principles of humanity. It is to be regretted that many of our most influential citizens are constantly found joining in recommendations for pardons to the executive, without reflection on the impropriety of defeating the purpose of the laws; and it is more regretted, that jurors, after they have convicted a felon under the obligations and solemnities of an oath, turn round

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(x) Report of Commissioners to the Legislature of New-York, 1817.



and join a petition that renders their own verdict a nullity, and the forms of justice a fruitless ceremony. (y) Whoever attends the criminal courts of this State, and more particularly the court of General sessions of the city and county of New-York, may perceive the palpable tendency of a frequent exercise of the pardoning power. Criminals are constantly arraigned, tried and convicted, who a few months, and oftentimes a few days before, were dismissed from prison by a pardon from the governor. We shall here present the views and sentiments of one of our statesmen on this point, who has spoken in words more forcible than any we can adopt, and whose remarks are entitled to peculiar respect from his sound experience as a lawyer. We refer to the speech of Ogden Edwards, Esq. in the late Convention of this State. When speaking of the effect of granting pardons, he said, "that by the indiscreet use of the pardoning power, the administration of justice had become relaxed; that if not checked, we should soon have to erect State prisons in perhaps every county in the State. The exercise of the power of pardoning is pleasant, it is humane, it is agreeable to the best feelings of the human heart; but sad experience has taught, that the interests of the community require, that the civil arm should be brought to bear with power upon malefactors. It was a remark of an eminent Judge, now gone down to the grave, that mercy to the criminal was cruelty to the State. If you exercise this pardoning power to the extent that has been done, what will be the consequences? The rest of society will be exposed to the depredations of villains. The laws should be exercised with a strong and resolute hand. Our Penal Code is mild; and the manner of punishment is meted out to all in the proportion they deserve. If a reasonable doubt exists, the felon is acquitted. But should he be convicted, there is still a discretion reposed in the court for his benefit. Why has the pardoning power been so fully and frequently exercised? Why are our prison doors so often thrown open, and villains let loose to prowl upon society? It is because our executive has been too much influenced by feelings of humanity. The governor

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(y) See Annual Report, &c.

must nerve himself against their solicitations, and act with a consciousness that he must account to the people for the manner in which he uses this pardoning power. Even in Great-Britain, a pardon never passes the great seal, without containing a recital of the causes for which it is extended. But in this State they are granted without a single reason for it. And after the inhabitants of a country have exercised their vigilance in detecting the felon; after the jurors have convicted, and judges sentenced him, the interposing hand of the executive rescues him from punishment. Unless we abolish this system, we may as well open the prison doors at once. They enter novices in iniquity, and remain long enough to become professors of all its arts. This is the practical operation of the system, and unless we nerve ourselves against it, sooner or later the rights of the people of this State will be held by a moral precarious tenure. This sickly sympathy is wearing away the foundation of our laws. Placed here as one of the guardians of the rights and privileges of the people, I wish to have such a provision inserted in the Constitution, as shall prove an effectual check upon vice.”\*

The tendency of too frequently exercising the pardoning power, has been found equally pernicious in the State of Pennsylvania, as far as practice has developed the principle. (z) The same remark applies, in a diminished degree, to other states. This grand defect will be further illustrated by the words of the late Governor of New-Hampshire. They are full of sound sense and correct observation. “The power of granting pardons” he remarks (a) “should be seldom exercised. The certainty of punishment has a great if not a most powerful influence upon the wicked in restraining them from the commission of crimes. The government should therefore avoid every thing that has a necessary tendency to impair the force of that certainty. A hardened, subtle offender, dead to moral feelings,

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(z) Vide Mr. Hopkinsons' letter in appendix.

(a) Vide his letter in app.

\* Vide Deb. of Con; p. 125.

calculates upon the many chances he has to escape punishment. His hopes are strong that he shall not be suspected ; that if suspected, he shall be able to avoid arrest ; that if arrested, proof will not be obtained to convict him ; and if convicted, that he shall be pardoned. That spirit of benevolence, which often prompts public officers to pardon the guilty, does honor to the heart, but it impairs the security of society. During the four years I was governor of this state, I pardoned but two of the convicts who were confined in the State Prison, although the applications for the first two or three years were numerous, and supported by the recommendations of many respectable characters. *I did not consider myself at liberty to question the propriety of the opinion of the court who rendered the judgment. I believed they were the only tribunal competent to pronounce upon the innocence or guilt of the accused ; and that their own decision ought to be conclusive."* (b)

Mr. Raymond of Baltimore, whose letter will be read with deep interest, indulges in the following observations, when speaking of the pardoning power in the state of Maryland. He says that "some of the facilities of escaping punishment might be easily remedied, and with this view, I would deprive the governor of the power of pardoning and granting a nolle prosequi. I consider the power to be attended with the most mischievous consequences, and should be taken away entirely. In the first place this must be a most unpleasant power for an honest and humane man to exercise. In the next place, there can be no hope in the present state of society, that it will be exercised with rigor and impartiality. Those who have strong friends will obtain a nolle prosequi, or a pardon, be their crimes small or great. Those who have not friends, will never obtain either the one or the other. But these are by no means the worst consequences of this power. It is the anchor of hope to the accused, and the convict, and there is very little likelihood of peni-

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(b) Vide Gov. Plumer's letter in app. The cases mentioned justified the pardon—one was insane, and the other in the last stage of life, without hope of recovery.



ence or reformation so long as there is hope of escaping punishment. A single spark of hope will support a mind which, without it, would sink into contrition and repentance. It should, therefore, be a principal object to extinguish every ray of hope of escape in the mind of the accused criminal, and of the felon " (s)

Mr. Parsons, in his letter on the Penitentiary System of Virginia, (t) considers the granting of pardons one cause of its failure to answer the required end; and the North American Review, whose investigations on all subjects do honor to the American nation, remarks, when speaking of the Massachusetts Penitentiary, that "out of fourteen hundred and seventy-one convicts, who have been sent to the Massachusetts State Prison, during a period of sixteen years, two hundred and forty-two have been pardoned, and twenty of them have been afterwards committed again." How many of these same pardoned convicts have been committed to prison in other states than Massachusetts we are not informed, and we cannot here forbear to express a most decided repugnance to the practice that has prevailed in this and in other states, of pardoning criminals, on condition of their leaving the state in which they have offended. It is immoral, unjust, and disgraceful. It is opening your prison doors and sending forth so many outlaws to mar the peace and plunder the property of citizens in neighbouring sections of the union.

The Committee trust that they have indulged in a sufficient latitude of remark on this defect. Its tendency to prevent the end of every Criminal Code is palpable. This truth has been seen and felt in other countries besides our own. Beccaria, Sir Samuel Romily, and Mr. Colquhoun have reprehended it on the other side of the water, and Sir James McIntosh, in a debate some three years ago, in the British House of Commons, on some of the Penal laws of Great Britain, stated to that body,

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(s) Vide letter from Daniel Raymond. Esq. app.

(t) " Appendix.

"that one pardon contributed more to excite the hope of escape, than twenty executions to produce the fear of punishment ; and that an able and ingenious writer who, as a magistrate, was peculiarly competent to judge, forcibly argued that pardons contributed to the increase of crime." (e)

The next error which the Committee would notice, is the frequent change of superintendants, governors directors and managers, in several, if not in all, of the Penitentiaries in the United States. No system of laws can prove salutary and effectual, when its administration is grossly defective. More especially a system intended to reform the most depraved and desperate portion of mankind, and one which is designed to extinguish the worst of passions, and destroy the most vicious habits, should be uniform and unchanging in its operations. This has not been the case in the immediate administration of the Penitentiary System. Unfortunately party politics have pervaded the different states of the Union, and all places of power and trust, have turned on their constant fluctuations. Not even our State Prisons have been spared. The men who have been entrusted with their supervision have been displaced again and again, and others been called in to supply their places. Removals and appointments, have been governed by party feelings, and made on party grounds, to give strength and consequence to this or that political sect. What has been the result ? As soon as one set of supervisors, or governors, have become accustomed to the duties of their station ; as soon as they have been able to take that comprehensive view of a system, that detects errors and suggests remedies, their powers have been vacated, and their functions transferred to others. These, in their turn, have been swept aside, to gratify the wishes of new applicants. In this state of things, the most pernicious results have been found. The government of our Penitentiaries has been often changed, old laws have been relaxed, and new internal regulations have been established. Rash experiments have been made. Nor

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(e) Deb. in House of Com. 1819.

is this all ; we fear that the selection of individuals to superintend our Penitentiaries has not always been the most judicious. Party favouriteism has had its dominion in this respect.

In Pennsylvania and New-York, political changes have been more frequent than in Massachusetts, Virginia, Maryland and other states where Penitentiaries have been established. Had the selection of governors and superintendants, in the two states first mentioned, been judicious, and been made with a regard to the peculiar relation that must exist between several hundred human beings guilty of crimes and placed in custody for punishment, example, and reform ; had men been selected for their public zeal, their benevolence and their capacity to devote time and reflection to their duty ; and more than this, had men who have been oftentimes appointed, been preserved steadily in their stations until their experience and observation had taught them wisdom and judgment, many of the evils now enumerated might have been prevented. As the system has been administered, two more disadvantages, kindred to the others, have here arisen. In the first place, there being no assurance of permanency in the enjoyment of these stations, good men have been constrained to decline them ; and in the second place, where they have accepted them, the precarious tenure with which they were held, destroyed that ambition, and extinguished that hope of reform, that would otherwise have been cherished.

The Committee consider that the cause of failure in the system here spoken of, is so apparent in its consequences, and so foreign in its nature to the system itself, that it requires nothing more in this place than the brief notice which we have conferred upon it.

The want of a school for Juvenile offenders, has been another, and a stable evil, as has also been the want of a proper system of moral and religious instruction. The first desideratum. has long been palpable, more especially in those Penitentiaries that are situated in our large cities, or in their vicinity. As population clusters. the civil relations of life multiply, moral habits become less strict, education is less dif-



fused, and a portion of the youthful part of the community are more neglected ; temptations to vice are stronger and more numerous, and young convicts bear a greater ratio to old ones, than in the interior. Hence the Criminal Courts of the cities and larger towns, frequently sentence boys from fourteen to eighteen years of age, to a long term of service in our State Prisons. Whoever has entered these abodes, has seen youth of various ages from fourteen to twenty years old, wearing away a portion of the brightest and most precious period of their existence among felons of the most abandoned description, without the means of improving. It is impossible that they should not come forth prepared for evil deeds. The worst examples are constantly before their eyes. Morality is ridiculed : honesty is dispsied, and vice is set off with every attraction that hardened guilt can suggest. Religious service we believe is generally performed in our state prisons once a week. This does not seem adequate to produce the effects to be desired. We think that the chaplains of our Penitentiaries should often visit the criminals, and afford that iustruction, and give those mild and conciliating counsels that conspire to awaken and restore the mind to its lost tone of moral energy.

We shall conclude this division of the Report by noticing one more defect attendant on the administration of the Penitentiary System, although no way intrinsic, or inherent in its constitution. We refer to the great regard which has been paid, in the different states, to the revenue to be derived from the labours of convicts in the State Prisons, without paying due respect to the fact, that the end of the system itself might be defeated by such policy. It is very natural, and it is very necessary that the States should pay a strict attention to the financial resources, and think of debt and credit. Still it is a source of regret to see narrow fiscal views bear so strongly on the public mind as not only to defeat a great moral purpose, but even to increase expenditures which it is intended to diminish.

Two considerations strike the mind on this point : first, the object of the Penitentiary System ; and secondly, the great

increase of the necessary expense attending it, in consequence of its failure to produce expected results. What then was the object of this system in the United States? It has already been mentioned ; it was the suppression of crime and offences, and the reform of convicts. What should be the first thought of those who have the charge of its administration ? Not its annual income, not the amount of revenue that can be derived yearly, not the most lucrative end to which the toils and labours of the convicts can be devoted ; but the government, discipline and internal arrangement, which will be most conducive to the great object of the system. If mingling young and old criminals in the same apartment ; if crowding convicts together, by night or by day ; if tolerating a state of things that permits a constant intercourse among culprits, and affords those social recreations, and those effusions of spirit, that extinguish a sense of shame, and cross the salutary tendency of punishment, promote the saving of expenditure, they defeat the purpose of the system to which they are intended to be subservient, and render vain and useless, to a great extent, the labours of the Legislature and the integrity and firmness of the jurist and the magistrate. In the second place, the attempts at economy now resorted to, by those who have the management and control of our Penitentiary establishments, are abortive, since the fact is clearly evident, that instead of preventing, when viewed in their full operation, they augment expense. The most effectual method of lessening disbursements would be the diminution of crimes and offences, by the due execution of the laws ; and so far as their execution fails to promote this diminution, so far the public are laid under pecuniary liabilities, that might be avoided. If the construction and internal regulations of our Penitentiaries were judicious, there would be less commitments for crimes, and, of course, less expense in the yearly management of our Penitentiaries. In truth, revenue, as connected with the system of which we are treating, should never enter into the views of our different state governments, as a primary object. It should never clash, nor, in any manner, come in competition

with the most secure and competent means of preventing crimes, and of changing the characters of vicious men, who fall under the sentence of the law. And yet one of the grand complaints against the Penitentiary System is, that it will not support itself. The states are brought annually in debt, and the people are compelled to lose, instead of gaining wealth by its existence. It presents a singular phenomenon in political economy, where a Criminal Code is a source of public revenue. Heretofore it has been supposed in every rational state of society, that there would be a depraved, indolent and desperate portion of the community, who in any event would prove a tax to the rest of the people. If suffered to roam at large, they would prey upon the peace, violate the security, and plunder the property of their fellow citizens. If confined to hard labour, they might still compel the commonwealth to contribute out of its annual resources to their support. But after all, is not the commonwealth the gainer by their confinement, even if the State Prison that holds them does not pay its way? For what would convicts do, were they in the full enjoyment of their personal freedom? They would commit constant depredations on the community, and live in indolence and profligacy, on the avails of their guilty deeds. We must compare what little they would earn by honest labour for their support, if left at large, with what they earn for their maintenance when confined in the Penitentiary—not forgetting, at the same time, what society would lose by their thefts, swindlings, counterfeittings, passing of forged notes, and other offences, and then strike the balance. In this view of the subject, no very alarming disparity would appear. But this is not all. When abandoned men are suffered to be abroad in the world, with all their evil propensities in full vigor, they spread around them a moral contamination. They withdraw others from the paths of peaceful industry, and diminish the productive energies of the country.

Several of our Penitentiaries support themselves; others, it is probable, would also, could there be stability in the tenure of the offices and trusts which are connected with them. The Commit-



tee would certainly inculcate a prudent regard for frugality ; but let not an ill-timed parsimony defeat moral ends, vitally identified with the tranquility and safety of society ; and not only this, but even go to defeat its own immediate object, by the consequences to which it must lead. The state of the country is becoming more favourable to the debt and credit of our Penitentiaries. We are placing more reliance, than heretofore, on our internal resources, and more dependence on our domestic manufactures, especially on those of the coarser kinds, and we may find the labours of convicts attended with a more certain remuneration. But whether this prove the case or not, we should either renounce the Penitentiary System altogether, and resort to some other method to punish and prevent crimes, or pursue such a course of policy in its government as will render it the most effective in its bearings and operations. This has not been done when profit has been the moving spring of action.

We have mentioned the want of proper diet as a defect worthy of notice. Convicts who are consigned to hard labour should be supplied with food that is coarse, wholesome and nourishing, and they should have it in sufficient quantities to meet the requisitions of nature. But here we should stop. Every thing calculated to inflame the passions, and sharpen the evil propensities of men ; every thing of a stimulating nature ; every thing calculated to render a Penitentiary attractive and pleasant, as a place of gratification to the appetite, should be strictly-avoided. The use of ardent spirits and exhilarating liquors and fluids, in any shape, excepting as a medicine should be rigidly precluded. This has not heretofore been done in many of the State Prisons. A certain portion of spirituous liquor has been dealt out daily to each convict, and their food has been far better and more luxurious, than that of two thirds of the honest mechanics in the community. The Committee do not say that this has been the case in every state ; but it has been the case in their own, and in others. If we are to render public prisons, places where the desperate and depraved

in the land find comfort and indulgence ; if they prefer to move and breathe in their walls, to being in the possession of personal liberty ; if when they leave their gates, they cast back a lingering look, on the daily gratifications which they enjoyed, the terror of punishment is gone, and the dread of law is destroyed.

These are the views of the Committee, as to the defects which have produced a failure of the Penitentiary System in the United States. Others, perhaps, of a collateral nature, might be enumerated ; but the leading evils have been fully designated, arranged, and amplified. We will concede, that the system has not answered the expectations of its advocates ; but a concession on the other hand, is equally demanded, that it has not had a fair trial, or if it has had a rational test, proof has been afforded that it can be rendered more effectual than any other mode of punishment. In Pennsylvania, for a number of years, while there was a judicious selection of inspectors, while there was uniformity in the internal regulations of the system, and while there was sufficient room for convicts, its operation was found peculiarly salutary, and the hopes and confidence of men gathered round it. In the state of New-York, we can also say with confidence, that for several years, while the managers were men of public spirit, and of sufficient leisure to attend to the careful and uniform management of our State Prison, that it was productive of many public blessings that have since disappeared, from the existence of neglect, and from various abuses that have been pointed out in our general summary.

And even admitting all that the opponents of the system assert, one question should be always candidly borne in mind : suppose that the Penitentiary System had never been established in the United States, what would have been our condition ? It is believed by the Committee, that it would have been far more intolerable than the present state of our criminal laws. It will be perceived that the system has led to a change in the Criminal Codes of every state in the Union, as far as it has been adopted. They have been fundamentally reformed and sanguinary and ignominious punishments, renounced. Death, crop-

ping the ears, burning the hand, exposure in the pillory, the public infliction of stripes, and confinement without labour in the county jails, for a term of years, have been abandoned, and confinement to hard labour substituted. And after all, there is no data to authorize the conclusion, that crimes have been more numerous or atrocious, than they would have been, under the old laws. Reformation was rarely, if ever, produced by their administration, and many criminals have been driven to desperation by marks of disgrace ; whereas several instances can be pointed out, where convicts have been reclaimed and reformed in our State Prisons, and been sent forth with a character for industry, sobriety, and honesty. It is not practicable to institute any thing like a fair and conclusive comparison between the operation of our present Criminal Codes, and the severe and cruel laws which they have superseded. Population has increased, and the history of nations shows us, that crimes and population do not always bear the same proportion to each other. The density of the latter has a material influence. Two hundred thousand people residing in the space of two miles square, will show a much more formidable criminal calendar, than the same number scattered over a whole country, or a whole state. Vices are produced by the intercourse of the profligate ; and bad passions mingle together, influence each other, and break forth in deeds of guilt and desperation. Inequalities in the condition of individuals, become more apparent ; property is less equally distributed ; poverty is more perceptible, and want and misery more common. New relations in society are created, new laws are required, new offences arise, daily transactions are multiplied, and the avenues to temptations are rendered more numerous. Hence, it would not be judging by a fair standard, to take the records of criminal courts, thirty years ago, and the records of the same kind of tribunals, at the present day, and after making allowance for the excess of population at the present, over the former period, institute the contrast, and draw a general deduction. But let the Penitentiary System be abolished, for a short time, and let the laws that were formerly in force,



be again called into being, and administered for two years to come, and we should then be able to derive some data on which our conviction could rest. If we may judge of the operation of Penal Codes in other countries, and in other ages, where they have been severe and bloody—where life has been held cheap, and corporal inflictions necessary, we shall find nothing to induce the renunciation of our present laws. And, indeed, defective as the Penitentiary System has been, in its administration, and disappointed as ardent and sanguine minds have been, in its result, we shall yet endeavour to show, that no substitute, which the feelings, the sentiments, and the habits of the American people would tolerate, can be embraced with effects and consequences more salutary than those which have appeared under it. We see crimes and offences multiply : we forget the changing state of society ; we forget the increase of population ;—we forget the new restraints that are naturally demanded, and the fresh temptations that are created ; we forget what might be the tendency of different laws, and attribute the whole evil to the Penitentiary System. Reason and reflection will correct this error in judgment, and lead us to different views.

Thus far, the Committee have proceeded to point out what they consider to be the leading defects of the Penitentiary System, in this country. They now enter on the second part of their Report : In what manner can these defects be remedied, and how can the System be rendered effectual ? In designating the foregoing errors, many of the improvements to be suggested, have been negatively anticipated. The Committee recommend :

First. That the internal construction of our Penitentiaries be altered.

Secondly. That solitary confinement be resorted to.

Thirdly. That when solitary confinement is not adopted, the classification of convicts be rigidly embraced.

Fourthly. That every convict sleep in a solitary cell.

Fifthly. That Penitentiaries be erected for juvenile offenders.

Sixthly. That a suitable diet be provided and adopted with uniformity.

Seventhly. That the pardoning power be never exercised excepting in extreme cases.

Eighthly. That more caution be exercised in the selection and appointment of the inspectors, governors, superintendants, managers, agents, and keepers who have the controul and supervision of our Penitentiaries, and that there be more stability in the tenor of their offices.

Ninthly. That the sentence to hard labour be enforced, with certainty, rigor, and without favour or partiality, of any kind.

Tenthly. That a strict and undeviating regard be paid to cleanliness.

Lastly. That less regard be paid to revenue in the administration of the Penitentiary System.

In speaking of the construction of Prisons, it is not the intention of the Committee to propose specific plans for their erection. It is immaterial what may be the order and style of the architecture of a Penitentiary; it is immaterial what may be its length, breadth, height and form of exterior;—will it answer the ends of reformation here proposed? This is the only question that is interesting to the Committee, at the present moment.

A Penitentiary should be sufficiently large and spacious to admit of the execution of any system of internal police, and of any interior arrangement, in the treatment of convicts, that may be deemed necessary. The plan on which it is contemplated to construct the new Penitentiary, to be erected in the city of Philadelphia, by the Pennsylvania government, meets the views of the Committee, and will allow the full application of the reform, for which they contend. In the first place, there is to be a lot of ground in the shape of a parallelogram, surrounded by a wall six hundred and fifty feet long, and thirty-six feet high. Within this wall, the prison is to be erected, and to have two hundred and fifty cells. They are to be built at some distance from the outer wall, to be one story high, and about twelve feet square;—each cell to have a yard about it, of 12 feet by 20.

This arrangement will permit each prisoner to be kept in complete solitude, by day and by night, to eat and drink alone, and to perform labour by himself, throughout the day, when labour is enjoined. The new Penitentiary at Pittsburgh, in the state of Pennsylvania, has a double row of cells, making two hundred and fifty in number, attached to the outer wall, showing an exterior of an octagon shape. The cells are one story high, with a separate yard to each cell. The principles adopted in the construction of these Penitentiaries, would permit the full application of the recommendations for reform which follow, and they may be taken as a data on which our reasons can be grounded. A striking contrast will be exhibited, when they are compared with the old Penitentiaries of Pennsylvania and New-York, and those which the other states in the union have constructed:

The Committee now come forward and advocate a change in our Penitentiary System, that will be radical and fundamental. They are fully persuaded that nothing less than solitary confinement will ever enable us to give it a fair and full trial, in the United States. If this fails, on its full and complete adoption, then the System is intrinsically defective, and out of the compass of perfection. There is nothing hazarded in this remark. If it were made by every friend of the System, on both sides of the ocean, nothing would be jeopardized, for there is the strongest reasons to believe, that with this improvement, a confinement in a Penitentiary would prove the most effectual and salutary punishment that has ever been devised, since the origin of human government and human laws. And the Committee are happy to find this doctrine sanctioned, by most of the very instructive, and interesting letters, which follow, in the appendix to this Report.

Wherever solitary confinement has been tried, it has produced the most powerful consequences. In the State Prison of Philadelphia, offenders of the most hardened and obdurate description—men who entered the cells assigned them, with every oath and imprecation that the fertility of the English language



affords—beings, who scoffed at every idea of repentance and humility—have, in a few weeks, been reduced, by solitary confinement, and low diet, to a state of the deepest penitence. This may be set down as a general result of this kind of punishment, in that prison. In the New-York Penitentiary, many striking instances of penitence and submission, have also been afforded. Where prisoners were peculiarly refractory and vicious, they have been placed in solitary cells, and insulated from every human creature. Even the messengers who carried them their food, were enjoined not to utter a syllable, in the discharge of their diurnal duties. The most overwhelming consequences were the result. The spirit of the offender was subdued, and a temper of meekness, and evidences of contrition, displayed. A resort to this discipline, never failed to accomplish its end.

But, it will be asked, do we recommend an entire suspension of all labour in our Penitentiaries? We answer in the negative. We are sensible that such a proposition would not meet with currency in the different states, nor do we, at present, perceive the necessity of its general adoption. But the Committee would recommend, that solitary confinement be adopted, to a far greater extent, than has heretofore been thought of in this country. They would separate this punishment into two kinds: first, solitary confinement, without labour; and secondly, solitary confinement, with labour. Could these two methods, in the treatment of offenders, be universally and exclusively adopted, in the various Penitentiaries of this country, and all intercourse, and all kinds of communication, among prisoners, be prevented; could they be wholly precluded from even seeing each others' faces, a new era would soon appear, in the history our criminal laws.

It appears to the Committee, that in all cases where the convict is of a desperate character, and where his crimes are great and manifold, that his imprisonment should be spent in complete solitary confinement, free from all employment, all amusement, all pleasant objects of external contemplation. Let his diet be moderate, and suitable to a man placed in a narrow compass for

the purpose of reflecting on his past life, and on the injuries which he has done to society. This would produce other effects on experienced offenders, than imprisonment, with several hundred brother villains, where free intercourse, by day and by night, is permitted ;—where rich soups, and airy apartments are prepared for their reception ;—and where a shool for guilt, is established—where all the evil passions of man flourish in rank and poisonous luxuriance. Six months solitary confinement, in a cell, would leave a deeper remembrance of horror, on the mind of the culprit, and inspire more dread, and prove a greater safeguard against crimes, than ten years imprisonment in our Penitentiaries, as they now are managed. Who but would shudder at the bare idea of returning again to the dreary abodes of wretchedness, sorrow, and despair, in the narrow limits of a solitary cell? The memory of long and miserable days, and of sleepless and wearisome nights, once spent there, would come over the mind like the dark cloud of desolation, and terrify, and arrest the guilty, in the career of outrage. Employment tends to destroy the effects here pointed out. It diverts the mind, calls forth a constant exertion of the physical faculties, and renders men unconscious of the lapse of time. To felons, whose minds should be broken on the rack and the wheel, instead of their bodies, and who can only have their obstinate and guilty principles crushed and destroyed, by severe treatment ; no kind of labour should be given, while it is intended that solitude, complete and entire solitude, should be left to do its effectual work. Sooner or later, this mode of punishment will be adopted in the United States. It is founded on sound principles of philosophy, applicable to the nature of the human species. The term of solitary confinement, without labour, will be defined in our statute books for specific offences, and enter into the sentence of our criminal tribunals. Wherever it has been tried, it has been tried with success, in this country. No time should be lost in giving it a more full, ample, and satisfactory experiment. “Man is a social being,” says Governor Adair, in his last speech to the Legislature of Kentucky.—“The intercourse

of his fellow man is essential to his happiness, and necessary, for the expansion of those noble faculties, which distinguish him above all other animals. Unbroken solitude is the grave of his genius and his joys. Virtue herself wanders with melancholy aspect in the regions of exile, and sinks, with despairing anguish, amid the gloom of that dungeon, from which she is never to emerge. But absolute and compulsory solitude, when adopted as a punishment, and inflicted for a season only, has been found productive of the most beneficial results. It is the inquisition of the soul, and the tyrant of every vice. It may be regarded as scarcely possible that the guilty prisoner can long inhabit a cell where darkness and silence reign, undisturbed arbiters of his doom, without some relenting of purpose, some real penitence of heart. The moral faculty regains its lost dominion in his breast, and its solemn responses are regarded as oracular. He acquiesces with abated resentment in the justice of the sentence by which he suffers. That audacious spirit of resistance to the established order of society, which drove him to the commission of every outrage, gives place to the mortifying sense of his weakness and dependence; and he ardently desires, as the first of blessings, a return to that very society from which his crimes have banished him. Hence originates a disposition fitted for the reception of moral and religious instruction—a conformity to the requisition of his present condition—a spirit of active industry, emulation and amendment, the means of present favour, and future restoration; and all the benefits which are consequent on regular habits and amended morals.”<sup>1</sup>

The other kind of solitary confinement, might be designated for the most hardened felons, after they had passed through a sufficient course of discipline in solitude, without labour. Their first relief should be the application of their time to that sober industry, which they had discarded, for the devices of guilt and the commission of crimes, before their sentence to the Peni-

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<sup>1</sup> Vide Gov. Adair's Speech to Leg. of Kentucky.



tentiary. It would also be proper, for another class of criminals, of a lower grade, who might be doomed to solitary imprisonment and hard labour in the first instance. It is believed, by the Committee, that the punishment would be found severe, salutary and effective. A long period of solitary confinement, without any labour would have an unfavorable effect on the future ability of the convict to be useful in his peculiar pursuits. His mechanical capacity might be impaired by long inertness. But when solitude and labour could be combined, consistently with the design of punishment, the execution of the law would not give cause of objection to those who look at our State Prisons, more with a view to loss and gain, in point of revenue, than to any thing else. It is contended that the solitary confinement here spoken of, would be suitable to all crimes of a secondary degree, and that it would tend to prevent offences in two ways. It would have a lasting and powerful effect on the mind of the offender himself. If the reform of convicts is within the reach of any human laws, we might expect it here. It would also prove a restraining cause in the evil hour of temptation, when its bitter consequences were recollected. It would also accomplish much, by the means of example, if example can ever hold the reign of terror over the vicious and profligate.

Much confidence is cherished, that if these two grand methods of punishment, could be rigidly enforced, in our Penitentiaries, and no other adopted, that a more efficient and salutary criminal code would be exhibited, in the United States, than has been seen in any other country. The term of imprisonment might be much shorter than it is now. Instead of ten and fifteen years, it could be reduced to less than half the number and so throughout the whole statute book, on the same principle of reduction.

It is contended, by many, that solitary confinement is too serious a punishment for our fellow beings; that it will drive them to madness and mental alienation, or send them rapidly to the grave. We are happy to find that its contemplation, in the

mind of a virtuous and reflecting community, is attended with such feelings of revolt : for, this is an indication of its summary and salutary effects, on the most guilty and knavish of our race. They, too, will catch the abhorrence, and feel an interest to avoid the suffering to which it points. We are, however, inclined to think, that the fatal effects of solitude and confinement, are exaggerated. We do not believe that they would be so destructive of life and sanity, as it is imagined. Men have often been cast into the deepest and the darkest dungeons, to serve the views of despots and the policy of governments, on the other continent, and existed there, for years, on the poorest food, and again appeared before the face of the sun, with their bleached locks and sallow countenances. If, however, its tendency is so overwhelming, its adoption as a punishment will supply a desideratum in the American community.

But we cannot expect that all the states will immediately follow our views. Revenue, and not exclusively the prevention of crimes, will enter into their public policy. We regret to say, that convicts will still be suffered to have intercourse, and to mingle in common, in order to carry on particular manufactories, and to prosecute mechanical pursuits, which demand strong physical power. In time we trust that a wise principle of economy will be cherished, and the ultimate, and not the direct loss, to the community, by a method of punishment, that defeats its own object, will be duly borne in mind. But while the suppression of all intercourse among criminals is neglected, we must turn our attention to the most wise means of managing our Penitentiaries with this defect. This brings us to consider the necessity of classification.

If the state governments will go on, shutting up some three or four hundred convicts in a Penitentiary, and carry on manufactories, and a course of business, that need their joint labour, the division of their persons into classes will prevent many of the evils now flowing from their promiscuous and indiscriminate intercourse. Let the most hardened and guilty criminals be

kept by themselves, and the more trivial offenders be also attached to a distinct denomination. Let those of an intermediate grade, in guilt, have their own class and department. These divisions might be extended, and subdivisions be instituted, to suit the age, disposition, obstinacy or penitence, of the felon. But we shall be asked, how is the discrimination to be made? Who shall fix on the standard by which a division into classes shall be regulated? And we would ask, in return, where is the radical difficulty in distinguishing the character of convicts in a Penitentiary? In the first place, the records of their conviction, afford *prima facie* evidence of the degree of turpitude of which they have been guilty. A notorious offender will find his fame precede his entrance upon his new life; nor will men remain long in a State Prison, without betraying their strong propensities and ruling passions in visible indiscretions of conduct. A sign of humility, contrition and obedience, will be equally visible. Those to whom is entrusted the government of a Penitentiary, will have abundant means of drawing correct lines of separation, between the vicious and the superlatively vicious. Take a Penitentiary containing two hundred tenants; divide them into eight classes, and let each class be kept unconnected with the others; let all the classes be kept under strict regulations, and rigid bye-laws, and as few words be spoken as possible. Several beneficial effects must result. The work of contamination would be arrested; the distinction displayed in the classification would shew, that even in a State Prison, virtue, in whatever degree it existed, was esteemed above moral abandonment; and men, by being placed in small numbers, would reflect more on their individual conditions. Instead of criminals being huddled together, in one rude congregation, where all lines and contrasts are obliterated and destroyed, and where the work of moral disease is continually advancing, as is now the case in many Penitentiaries, we should at least see some offenders coming out from among the multitude of the condemned, redeemed from moral apostacy.

If classification is not adopted, then, as a choice of expe-



dients, the Committee would advise another remedy for existing evils.

There was a day when the New-York State Prison (2) was conducted with a strictness, precision, and uniformity, that precluded all conversation, and all the evil consequences of the inculcation of corrupt maxims, profligate notions, the communication of desperate plans, and the relation of profligate adventures and exploits. The utterance of a syllable was punished with confinement in a solitary cell. The restraint on the criminal was severe, and it rendered his confinement odious, and mentally oppressive. Aversion, deep and settled aversion, for the prison walls and all within them, was contracted ; and that aversion stuck a root in the soul that no time extirpated. This community, this commonwealth of felons, that now exists in our Penitentiaries, must be broken up. To this the Committee earnestly call the attention of the different states : and they do ardently hope, that when convicts are suffered to labour and spend their days together, in large numbers, or even in small ones, that all conversation, that all the chances of evil communication, will be rigorously prohibited, by the enforcement of strong and severe bye-laws. Great good will follow.

At Auburn, in the state of New York, the classification system is now in operation, on principles similar to those here laid down. It was recently commenced, and the most beneficial results are expected.

We would next call the attention of the public to another evil, that requires immediate correction. It is absolutely essential to any thing like success in the Penitentiary System, that criminals should sleep in solitary cells, even when they are not kept in solitude during the day. The practice of turning ten, fifteen, or twenty, into the same sleeping apartment, has been sufficiently noticed. Every criminal should retire at sunset to his own domicil, and there remain, free from the sound of a human voice, until the rising of the next morning's sun.

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(2) In 1800, and at other periods.

This would at once destroy those evil and dangerous consequences, that have been brought into existence and nourished, during those hours that should be devoted to reflection and repose. It would leave human beings in solitude and darkness, to turn their thoughts on the causes that placed them in their narrow and gloomy mansions, and carry back their memories to that early dereliction from duty, which placed them at the bar of a criminal court, and incurred the heavy sentence of the law. It would lead them to contrast innocence with guilt, and to appreciate the worth and blessings of moral rectitude. It would tend to suggest amendment, and transport the mind to a future period in the prisoner's life, when better days and happier nights would again pass over him; when he would be restored to the comforts of social life, and to the wide and alluring theatre of activity and enterprise. It would, in fact, render the nights of the prisoner a severe scene of mental tribulation, if the least spark of feeling and contrition was left. The worst of men will think at times, and the hour of midnight, is, of all hours, the most horrid to a guilty conscience, when the mind is left to that retrospect, that brings agony and remorse. Could all our Penitentiaries be constructed like those mentioned in Pennsylvania, the alteration in the treatment of convicts, here advocated, would be secured at once, with many other benefits; with the prevention of many horrid evils that now exist, and with the promotion of individual and public good. The Committee will next speak of the erection of new prisons for juvenile offenders.

The policy of keeping this description of convicts completely separate from old felons, is too obvious to require any arguments. Nor does it seem wise to place young felons, who have been guilty of but one offence, and who can be reclaimed and rendered useful, in that severe state of punishment that attends solitary confinement. In most instances, they have no inveterate habits to extirpate. Their characters are not formed. No moral standard of conduct has been placed before their eyes. No faithful parent has watched over them and restrained their vicious propensities. Their lives exhibit a series of aberrations from regularity—a chain of accidents that has rendered

them the victims of temptation, and the sport of adversity. They have been sent from place to place, subsisted by precarious means, or been left to combat with poverty, want, and the inclemency of the seasons, by the exercise of their own ingenuity. Every thing about them has been various and unsettled; and in the unfortunate hour of temptation, while under the pressure of want, or when seduced into the giddy vortex of depraved passions, they have offended against the laws, and been sentenced to the State Prison. There are exceptions to these remarks, in a few solitary instances of premature and settled baseness; but this view has a very extensive application to the cases of juvenile offenders in our large towns and cities. In the interior it is very rare that boys are indicted for crimes. What then is the duty which devolves on our legislators? To use every effort to bring back these unhappy youth to society. They should be restored, as far as possible, to the rights forfeited by an early departure from the line of rectitude. This can never be done, under a system of punishment, that is suitable to the most obdurate and abandoned criminals. The human mind has its seasons and stages, when specific remedies are, and when they are not, applicable. The Committee would therefore recommend, that prisons be erected in the different states, exclusively for juvenile convicts. In the larger states, there could be a division into districts, and a place of confinement erected in each. In Massachusetts there is a prison for young convicts in each county.

These prisons, the Committee conceive, should be rather schools for instruction, than places of punishment, like our present State Prisons, where the young and the old are confined indiscriminately. The youth confined there should be placed under a course of discipline, severe and unchanging, but alike calculated to subdue and conciliate. A system should be adopted that would prove a mental and moral regimen, if we may be indulged in the expression. The wretchedness and misery of the offender should not be the object of the punishment inflicted; the end should be his reformation and future



usefulness. Two objects should be attended to : first, regular and constant employment in branches of industry, that would enable the convict to attain the future means of livelihood : and, secondly, instruction in the elementary branches of education, and the careful inculcation of religious and moral principles. The latter would be vitally important.

Most of the young offenders in the different State Prisons, so far as the knowledge of the Committee extends, have no trade or mystery. They have never been put with the industrious mechanic, or been placed to labour with the cultivators of the soil. Their lives have been chequered with the most idle habits. Hence, one great object should be, to give them a settled occupation for life. One part of their time should be devoted to those mechanic pursuits, to which their genius may be adapted. Under strict and rigid regulation, let them go to their daily toils, and each day acquire some new principles of knowledge. Emulation should be excited as far as possible; and extraordinary exhibitions of skill, or great and successful efforts in industry, be rewarded by marks that would call forth an ambition for excellence. What would be the effect? We should see a little society of boys, growing up in useful employments, imbibing settled and lasting habits of the most industrious kind. They would go forth, at the end of their confinement, with a capacity to obtain an honest living—with the means of acquiring wealth and fortune. Another part of their time should be spent in the acquirement of elementary education, in all the branches of knowledge requisite for the ordinary transaction of business. The expense of giving young culprits this advantage, would be small, and its consequences of the most salutary and durable nature. The force of education is no where better understood, and no where more highly appreciated, than in this country. Its connection with the duration and prosperity of our public institutions, and its importance to the peace of society, and the security of individual rights, are daily seen. Why then neglect to give instruction where it is most required—to that portion of the rising generation, that

have fallen victims to early guilt, in a great measure, for the want of it. With the elementary instruction here spoken of, plain, simple, and practical moral principles, like those promulgated by our illustrious countryman, Benjamin Franklin, should be constantly blended ; and great care be used in selecting teachers and superintendants, who, with mild manners, humane dispositions, and benevolent spirits, will watch over their charge with fidelity and success. If such a policy can have no effect towards reforming our juvenile offenders, then we may despair of effecting any thing, over which we can pour forth our congratulations. If industry and education—if strict, wholesome, and sound moral discipline—if rendering places for their confinement abhorrent to the views, feelings, and inclinations of every vicious youth, by an entire new life within their boundaries, equal in strictness and regularity to that of monastic establishments, cannot produce a salutary change, then we may mourn over the lot of our race, and rest under the conviction, that there are cases where hope has neither refuge or resting place. (3)

As to the construction of these prisons for juvenile offenders, it is believed that they should sleep in separate and solitary cells, and that during the day, they should be divided into classes. Solitary confinement during the day does not seem to be called for, in the case of these culprits, nor would it be consistent with the regulations here advocated ; but the necessity of classification is obvious. There will be shades of guilt, among young, as well as among old criminals ; and the evils of contagious vice appear in both cases. There will also be differences in dispositions, capacity, habits and age, that will demand discrimination. The Committee do not feel themselves called on to act in the capacity of architects, and to draw plans for edifices ; they are called on to make suggestions, as to

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(3) The Committee are happy to remark, that the new Penitentiary erected at Auburn, in the state of New-York, has one wing containing separate cells, calculated for the solitary confinement of convicts from sun-set to sun-rise.

principles and their application. They have recently perused a small pamphlet, entitled "Description of a design for a Penitentiary for six hundred juvenile offenders, as recommended by the Society for the improvement of Prison Discipline in London," (4) from which they take the following extract concerning classification:—"The whole number of juvenile prisoners, viz. 600, are divided, according to this design, into nine classes; and such is the construction of the building throughout, that a most effectual and constant separation of these nine classes can be preserved at all times, whatever be their occupations, whilst all of them are going through their regular, and, generally speaking, the same discipline, without any interruption or interference with each other. To every class is appropriated a distinct prison establishment, whilst the power of complete superintendence is placed in the hands of the governor.

"Every class has a separate work room, about ninety feet in length, which is to be divided off at the lower end for a school room, as above mentioned; a dining room and airing room, with a covered colonade, in case of rain; a set of shower baths, washing sinks, &c.; a separate stair case, leading to the night cells; a solitary cell, for the punishment of the refractory of the class; a separate compartment in the chapel, fitted up with benches; also an area for such species of work as may best be carried on out of doors. By means of the moveable doors on the cell galleries, the requisite number of night cells are provided, and which may be varied, from time to time, according to the increase or diminution of prisoners; at the same time giving to each prisoner a *separate cell*; an arrangement which is earnestly recommended, as essential to the health and moral welfare of prisoners.

"Such is the nature of this design, that it would be by no means difficult to increase the present number of classes to a very considerable extent; but the apparent advantage, in this respect, would be greatly exceeded by the loss of many other

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(4) Published in London, 1819.



essential advantages. It has, therefore, not been made an object, in the preparation of this design, to obtain a great, but a sufficient degree of classification, combined with the most effectual and invariable separation of each class, and at the same time, to provide that the power of constant and complete inspection should be placed, as much as possible, within the reach of the governor."

It will be said, in answer to all this plan of improvement, that its expenses will prove an invincible obstacle to its execution. Again we say, what is the object of Penal laws? Suppression of crime, and the reform of criminals, is the answer. Where then is the fault of our proposition? If a better one can be suggested, we shall be among those to hail its annunciation with feelings of pleasure. But let us take the other view, and say a word of this alledged departure from economy.

Which, then, is the cheapest, to take five hundred juvenile offenders, and render the great part of them honest and useful men, by a new course of punishment, attended with no extraordinary expense, or to thrust them into our present Penitentiaries, with a moral certainty of their coming out with new vices and with fresh desperation—with the moral certainty of their either being in prison, as a public burthen, their whole lives, or of their living, when out, by depredation and knavery? If reformed, their industry will contribute to the productive energies of the community, and augment its aggregate revenues; if idle, their labour will be lost, and if dishonest, they will diminish the avails of the labour of others; to say nothing of their example and baneful influence, as a component part of a great population. Upon every rational ground, therefore, the apprehension of additional expenditures affords no arguments against the reform here pointed out.

We fear that the younger states will not immediately embrace any thing like the plan for reform here recommended, where they have recently erected Penitentiaries. With the exception of states along the sea-board, these juvenile convicts are few in number, and the present Penitentiaries will be used for the old

and the young. Every principle of reason and policy dictate if this is to be the fact, that in every Penitentiary in the United States, the young offenders should be kept by themselves, and that instruction should be afforded them. It is no less humane than wise, to give them those steady and useful employments, which will enable them to live honestly upon their earnings, after their term of service, in the Penitentiary expires.

While, in this country, we are doing much to prevent crimes, by the growing establishment of Free schools and Sunday schools, and the education of youth is an object of vital consideration, it is to be hoped, that juvenile delinquents will not escape the attention of the wise, the good, and the public spirited. We rejoice that in England, the reformation of juvenile offenders is commanding the attention of men who combine station, power and talents—who stand among the ornaments of the British empire, and of the civilized world. Their publications, their eloquence, and their appeals to public conviction, are strong and spirited. They cross the ocean, and reach hearts on this side of the wide waters, which beat in the glorious cause that commands their zeal and exertions.

If we would render our Penitentiary System effectual, we must not render our public prisons attractive to the idle, the needy, and the profligate, by holding out the idea of comfort or sumptuousness. Felons must not eat better food, find their animal spirits better sustained, be more comfortably clothed, and dwell in more commodious apartments, after sentence in a court of justice, than they ordinarily enjoyed, in the busy world, before its freedom was taken from them. Personal liberty is dear to mankind, and its loss is repulsive to the mind; still repugnance is diminished, when something like an equivalent is found for its privation, in an improved state of existence. To men destitute of shame, and dead to the scorn of the community, the institution of a comparison between the mode of living in one place and another, is natural. All moral contrasts are forgotten. What shall we eat, what shall we drink, what shall we wear, how shall we sleep, and what company shall we keep,

are subjects that occur, when the thoughts of public delinquents are turned to a confinement in the Penitentiary. What aspect then should our Penitentiary present? A place where every thing conspires to punish the guilty. There should be nothing incident to it that is either pleasant or inviting. It must be obvious to all who reflect, that it would be an easy matter to give a direct encouragement to the increase of crimes, by the manner of treating convicts. Let them set down at the richest, and most sumptuous tables, after conviction; let them be regaled with stimulating liquors; let them be clothed with all comfort, inhabit spacious and airy apartments, and live with fit companions for the wicked, and how many felons would literally seek a residence, even for life, in a State prison? Many now sent there, it is true would not. These inducements would not reach their condition. But hundreds and thousands there are, who have no settled means of livelihood, who know not where the end of a year, or even a month, may find them, who are pressed in their resources for bare being, to whom the considerations here suggested most powerfully appeal. What conclusion does this reflection sanction? It goes to convince us, that so far as criminals, of the most depraved character, can realise more of the comforts of life in a State Prison, than out of it, so far it presents allurements to their eyes. And even with those of a less abandoned description, a confinement in a Penitentiary will have less terrors, in proportion as it affords more sources of enjoyment. The force of these remarks may not be realized by those who have thought on the Penitentiary System in the interior of the Union; but to those who have visited the prisons along the Atlantic coast, and seen them filled and crowded with the former tenants of European prisons, and old offenders who were born on our own soil; who see them containing the most needy, desperate, and hardy vagrants and outlaws that ever infested society, whose bread for years, has been obtained by fraud and plunder, they will not be thought so inapplicable to the grand matter of our inquiries and investigations.

But convicts must live, will be the answer to these remarks.



True—convicts must live ; and convicts who are doomed to hard labour must so subsist, that they can find their strength, vigor and spirits duly sustained. We would therefore say, that on the subject of diet, two principles should be followed. As it is hoped and trusted, that solitary confinement will be hereafter adopted in our Criminal Codes, to a great extent, it is recommended that in such cases, moderate and low diet be meted out to criminals. While an attempt is made to inflict mental discipline, it is necessary that the food of the criminal should not be of that description, that would serve to counteract the design. We do not say that bare bread and water should always be resorted to. In some instances it will be found requisite ; and in all instances of complete seclusion without labour, the cheapest diet seems the most proper. On the other hand, when convicts are to labour, their food, in the opinion of the Committee, should be nutritious, simple and wholesome, but of the coarsest kind. Nature should be supported by sufficient aliment ; but every thing like good living should be discarded. All spirituous liquors, of every description, should be rigidly prohibited. The use of tobacco as it exilerates the spirits seems a proper object of exclusion ;(5) and as to all species of food and drinks, that contain any stimulating quality, they should never be used, excepting as medicine. It is unnecessary to draw up a bill of fare, or to say, in this place, what convicts should, and what they should not eat, in detail ; this is a subject easily determined by judicious men who may be called upon to manage our different Penitentiaries. There is no difficulty in saying what diet will meet the policy which is here advocated ; and in closing this head, the Committee do say that in several State Prisons, too little attention has been paid to it. It is one that at all times deserves attention and vigilance.

We have spoken at large on the destructive effects of the too frequent exercise of the pardoning power. We spoke with freedom, but without allusion to persons or to Chief Magistrates.

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(5) This was formerly done in the Philadelphia Penitentiary.

We intended that our strictures should be abstract and general in their application. In bringing up the subject again, to suggest the remedy, our task is easy and simple. Let no convict be pardoned. Let the display of executive clemency be so rare and seldom, that it will amount to a virtual denial of all applications for its interposition, and a destruction to the hopes and expectations of all convicts. We must come to this, or find all attempts to perfect the Penitentiary System, fruitless, and worse than fruitless. But what is to be done? Two things are to be done, if we mean to correct the evils that we arraign. In the first place, persons of respectability, influence and moral worth, must abstain from passing off shameful impositions upon our Chief Magistrates, although done with the best intentions, and the purest motives. The practice of signing petitions for pardons, is one of a most pernicious and dangerous kind. It palsies our penal laws, embarrasses the Chief Magistrate, and, in effect, promotes the increase of crime and guilt. It creates unjust discriminations, and in many instances, violates the moral obligations of citizens, if we are bound by moral obligations, to do that which will promote the prosperity and happiness of the Commonwealth, and to refrain from all acts that produce their diminution. To see the most distinguished and benevolent members of the community, heedlessly putting down their names to an application for the pardon of a convict, who has forfeited every claim to any sympathy or humanity, but what the stern mandates of justice permit us to cherish with propriety, presents a most melancholy comment on the weakness of human nature, and a total want of all forecast and prudence. The Chairman of this Committee has seen lists of names, for which the utmost respect is ever cherished, at the bottom of applications, for the most notorious villains that ever faced a court of justice. Gamblers, and the keepers of gambling houses, where the sons of our first citizens and the inmates of our most respectable families, have been seduced, fleeced and ruined—counterfeiters, swindlers, murderers, and pirates--hostes humani generis, who roam and plunder over the seas, can strike the chord of

sympathy and send forth appeals that reach the bosoms and command the interposition of persons, who should shrink, with the feelings of abhorrence, from the touch of their petitions. We call the attention of the American public to the very able letter of Mr. Raymond, contained in the appendix to this Report, in which a striking instance will be found to corroborate the correctness of these strictures. A murder was perpetrated of the most cold-blooded, wanton and shocking character, on a helpless and unoffending man, who appealed to his destroyers as the father of a poor little family, by every tie that can disarm cruelty and vengeance ; and yet coolly, deliberately, and tranquilly, he was shot through the heart, while manacled to a tree in the wilderness. The murderers were condemned by the laws of the land. A petition was got up for their pardons, and hundreds and thousands signed it of the principal citizens of the union. Not only men but women signed it with alacrity, while the wife and orphans of the immolated victim, were forgotten and left to weep over the untimely fall of their only protector who was earning bread for their support, when his blood was sought by those fiends in the form and attire of men. We have no right to look for firmness on the part of a Chief Magistrate, and for his prompt rejection of petitions for pardons, while such reprehensible practices are continually indulged by men whose cool and reflecting moments would dictate a different course of conduct. It is painful to see wives and families deprived of their bread, by the commitment of a felon to the Penitentiary ; it is afflicting to see an aged father mourning over the incarceration of an undutiful and profligate son ; but what then ? Shall the prison doors be cast open, and convicts be let forth to commit depredations anew, and our Criminal laws be rendered a mere mockery ? Many of the applications sent to the Governor of the state of New-York, contain the most absurd allegations, and the most wilful misrepresentations ; and the late annual Report from the Auburn State Prison alleges, that “ the business of procuring pardons has become the steady and profitable employment of many individuals who attempt the grossest imposi-



tions upon the Governor." (6) When the obtaining of pardons becomes a profession and a settled pursuit, and those who engage in the vocation are favoured with the names of those members of society to whom we look to give a tone to public sentiment, the prospect of reforming criminals is in truth dark and hopeless. We call upon men in power and authority—we call upon the friends to the peace and the order of society—we call upon the friends of sound laws, and upon the friends to the rigorous and undeviating execution of sound laws, to raise the loud voice of reproof against the practice of embarrassing the Chief Magistrates of our states, with petitions for pardons. And we do also call upon the members of the Bar to refrain from acting in their legal capacity to procure the liberation of felons who have been justly condemned for their transgressions. (7)

The Committee also hope that those who are entrusted with the pardoning power will feel the importance of exercising it but seldom, and never but in extreme cases. If those in the community who should strengthen the arm of justice and render the laws sacred and certain, will send up their petitions without reason or consideration; if women and children are presented as instruments to obtain the relaxation of Penal statutes; it is to be hoped, that there will be a firmness and decision in the breast of the Chief Magistrates to enforce the uniform and rigorous operation of the laws, as the only sure means of protecting the rights of individuals, and guarding the peace and safety of the great body of the people, in their aggregate capacity. But we are told, and told truly, that there is not room in many of the Penitentiaries, to contain all the convicts, and that pardons are granted of necessity. This we know has been the case with our own State Prison, both under the administration of the late, and the present Governor. But whose fault is this? Not the fault of the Chief Magistrate. It is the duty of every Legislature to

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(6) See Report of Inspectors to Legisla. Jan. 14, 1822.

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(7) Sir Edward Coke pointed out the evil tendency of granting frequent pardons in the reign of Queen Elizabeth.

see that due means are afforded to enforce the laws. If more room is wanted for convicts, more must be provided. Let our Chief Magistrates, when necessary, call the attention of the Legislature to this point, and then let them stand by, for justice to take her course. This would produce a better remedy, than the incessant granting of pardons. To conclude on this subject, the Committee are cheered by the firm conviction, that a feeling is daily and rapidly growing up in the different states of the Union, that will ere long, render the frequent interposition of pardons, an object of public reprehension, and popular reproach. This sentiment is more and more visible in the prints and papers that traverse the nation. Certainty in the execution of Penal laws will be demanded on principles of self-preservation.

The judicious selection of persons to have the control, government, and administration of our Penitentiary System, is an object of the first importance, as we look to its improvement and perfection. In the enjoinder of this requisition, we mean to include agents, keepers, directors, governors, inspectors or managers, and all other officers of whatever name, who may be appointed to exercise discretionary power in and over State Prisons. Those who are included in this enumeration, may be properly divided into two classes—those who administer the internal police of Penitentiaries, and those who have charge of their general superintendence. The person or persons who have the immediate and direct management of convicts in a State Prison, have a trust confided to them of a most delicate and difficult nature. They are called upon to deal with characters of various descriptions, whose dispositions are different, and whose passions exhibit all the shades of turpitude and desperation. This is more particularly so, in the present state of our Penitentiaries, where a large number of convicts are placed together; where bye-laws and regulations must be made to govern their intercourse, and where a kind of special cognizance is had over the actions of each individual. Was each criminal kept in a solitary cell, by day and by night, fewer diffi-

culties would be apparent ; but, under the present condition of things, if we look to the amendment of convicts, or even if we pretend to keep them from becoming more depraved and dangerous, much depends on the character and qualifications of the person who holds immediate government over them. We conceive that he should be a man of mild and uniform disposition, of benevolent feelings, possessing courage, firmness and decision of character ; experience in the walks of life, a knowledge of human nature, and a capacity to discern the leading passions of individuals, and all their weak points, seem requisite qualities. Individuals of this description can always be found, if adequate inducements are held forth to engage them ; and when once obtained, they would cherish a deep and lively interest in the success of their efforts in the path of duty. Men who seek the office of agent or keeper, in our State Prisons, as a station of profit, should not be heard in their application. Party views and prejudices should not produce the selection of one and the removal of another ; and when a sound choice has once been made, a change should be viewed as a calamity. If the human character ever can be reformed by the use of reason, the inculcation of moral thoughts and moral principles, and the application of wholesome mental discipline ; if the reprobate can ever be called back to the ways of honesty or reclaimed from his vices, the Penitentiaries of this country open a wide and fertile field to the zeal and patience of the philanthropist. Much can be done. Human nature, in its very worst state, can be wrought upon with success. The history of Mrs. Frey's exertions in New-Gate, affords a most gratifying comment on these remarks. She has entered the prison walls like a ministering angel of truth, peace and mercy, and guilt, in the most awful and repulsive form, has relinquished a dominion over its victims.

As to the selection of inspectors, superintendants, directors or governors, it greatly involves the prosperity of the system, and we can never look for its success unless care and judgment are exercised on this point. We must rise above the sphere of



party passions and favouritism, and look abroad in the community, with a steady and dispassionate eye, for men who will watch over our Penitentiary policy as an important national experiment, involving a great portion of national happiness, and as one reaching the most intricate relations of society ; for men, too, who will preside over it with a capacity that can discern defects, and apply the ready hand of correction. Confident we are, that the state governments or state executives can find men of public spirit, and of competent qualifications, to discharge this trust with fidelity. When once selected, permanency in the tenure of their appointment is absolutely essential to the faithful exercise of their functions. Time and observation are necessary to obtain a sufficient knowledge to enable men to act with due discretion and effect in the management of a State Prison ; and when obtained, all the benefits to result from it are destroyed by ejection from office. Many of the State Prison codes and bye-laws, at this time, want amendment, and it requires talent, patriotism, ardour and industry, to make the required corrections. With men of prudence and capacity in business, we should unite others of a higher order, in point of ability, if we would constitute boards of inspection suitable to the ends which we have in view. We have said so much on this head, in another place, that further remark seems unnecessary.

When a convict is sentenced to hard labour, the spirit and letter of the law should be well observed. He should be put to work, and kept to work, in the the true sense and meaning of the words hard labour. (8) It is not contended that tasks should be cruel and tyrannical ; but any relaxation in the requisition of the law, any favour shown to one individual, that is not evinced to another, and in fact any thing like favour in any case is hostile to the System of punishment whose perfection is now sought. If one convict is to be permitted to sweep the rooms of the prison, another to clean the furniture and utensils, another to keep the yard in proper order, as a substitute for hard labour,

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(8) Vide Mr. Hopkinson's letter, App.

undue and improper partiality is shown, and an authority and discretion are exercised that the laws never intended. The certainty of punishment is destroyed, and pernicious contrasts are exhibited. Idleness should be guarded against, with the utmost scrutiny, unless solitude without labour, is the sentence of the criminal. To permit convicts to pass through any portion of their term in the State Prison in indolence, when it was intended by legislatures and courts of justice, as well as expected by the prisoners themselves, that constant and rigid industry should be their daily lot, is tolerating an abuse of a very mischievous kind. The performance of hard labour, is intended, by our penal statutes, as a part of the punishment of the convict. His exemption from this, in any degree, impairs the effect of the punishment. It is said, that in some of the State Prisons, the labour of criminals brings no returns; that there is no market for the manufactures which come from their hands. No facts of this nature are before the Committee; and if there were any, we should say, that it would be far better, even to realise nothing more than the mere price of the stock worked up, than to permit idleness to reign within our State Prison walls, when hard labour is enjoined. We believe that the products of labour, performed in our Penitentiaries, can always be sold for something; and it is far more politic to dispense with strict calculations as to profit, than to permit relaxation in the punishment of public offenders. Agents, keepers, and all officers, who have the control and management of convicts, should, in the view of the Committee, be wholly prevented from showing any other favours or discrimination than the State Prison codes and by-laws permit.

A disregard for personal cleanliness leads to the relaxation of moral principles, and renders the profligate more profligate, and the base more base. No public prison can be a place of reform, if a disregard to neatness is tolerated. The benevolent Howard, often had occasion, while visiting the dungeons of Europe, to raise his remonstrance on this subject. The Committee recommend, that the utmost care be taken, to render our Penitenti-

aries clean and wholesome, in every particular. The convicts should be compelled to keep their persons entirely free from every neglect, and every species of uncleanness. A habit of neatness would soon become pleasant and grateful to the feelings of the criminal; and if he had been once found among those collections of the wicked, where a disregard to appearance and decorum was apparent, he would reflect on the pollution of such associations, with disgust.

We again repeat the remark, that revenue must be a secondary consideration with those who administer the Penitentiary System, if its designs are ever to be accomplished. We put convicts in the State Prisons to be punished and reclaimed, not to earn money for the people. Punishment and its effects are never to be lost sight of. If the first object is the great productiveness of the labour of convicts, let it be so understood. We must then change our whole System to meet this end; and instead of confining prisoners within the walls of a State Prison during the day, it might be more profitable to put chains and weights on their feet, and let out their services in various ways. If the prevention of crimes is the design, let this also be substantively and primarily considered in all cases, and every thing be renounced that militates against it. The Committee, therefore, enjoin what common sense, and the most ordinary prudence dictates; let the first great question be, how can the Penitentiary System be rendered the most effective in diminishing crimes, and in reforming convicts? 'The moment this inquiry is forgotten, sound policy is contravened, and we give up the System to ruin and disappointment. It cannot be otherwise. Better that all the criminals in the United States should never earn a farthing, than to bear the present results of our defective and pernicious treatment. If it becomes necessary to keep each transgressor in perpetual solitude, it must be done. We must go through with the object of our Criminal Codes, or renounce them altogether, and begin again with the enactment of penal laws. Half-way laws, partial punishment, and legisla-



tive weakness and vacillation, will result in nothing but disaster, discouragement, and vice.

Here the Committee terminate the second division of their Report—the suggestion of remedies to meet existing evils in the Penitentiary System, and pass to the third general head: the substitute to which the different states in the Union must resort, provided this System is to be abandoned.

Let it be admitted, that the Penitentiary System in this country is beyond the reach of those radical improvements that would render it adequate to its original ends. Let us admit that the nation should rise up at once, and resolve on its immediate destruction. Let us repeal our present Criminal Codes, in the different states, and discard their mild features. To what must we resort? We shall have crimes, and we must have punishments. Transportation, corporal punishment, and death, have been suggested as a substitute for our present punishments. They have found a vindication in some of the public prints of the day, more especially that of transportation, and men of influence in the community, and those well versed in the laws of their country, often mention the latter as the inevitable resort of no distant day.

Let us examine the expediency of resorting to transportation, corporal punishment, and death, to prevent crimes. And as to the former, its impracticability is the first objection that refutes every ingenious argument in its favour. To what place will the United States send their felons? Where are our colonial—where our foreign establishments? Wherever our government extends and wherever it has force and authority, there the rights and immunities of American citizens may be enjoyed. We know of no inferior appendages, within the circle which it embraces. How then are we to dispose of convicts, if transportation is deemed expedient? We must either obtain some distant settlement, perhaps in the bosom of the Pacific ocean, or we must take some spot within our national dominions. As to procuring a foreign settlement, but two methods offer, by which the object could be effected; we must resort to purchase or to

conquest. The constitution knows of no such policy as the appropriation of money, by the Congress of the United States, to purchase a territory, that is not to be governed by that constitution—that is not to be a part of the American confederacy. The purchase of a foreign station is out of the question. Shall we then proceed by conquest? Shall we send our navy to take possession of an Island in the western seas? Foreign conquests, for any purpose, are hostile to the principles of our national policy. If one can be authorised, so can another, and we may go on till we have a chain of remote settlements. By what laws would they be governed? Not by the American constitution; not by the laws that extend their empire from the Floridas to the borders of the Canadas. A local government must be organized, and principles, foreign to our constitution, admitted. The expense of acquiring such a territory, and the expense of retaining it; independent of the disbursements for transporting criminals, are entitled to some consideration, if all other objections could be removed. But when we take into view the great expenditures that would continually be demanded, to send out convicts, and to keep them within the limits of their exile, we see new impediments. We must have military establishments, a guard, a foreign garrison, to watch over the rising destinies of our hopeful settlement. A few voyages round Cape Horn to carry forth the tenants of our prisons on their conviction, and a few annual appropriations to support a few troops to keep them in subordination, and to prevent their speedy return, would show an expenditure more than sufficient to erect separate cells, and support in solitude, every convict in the United States. The expenses for transporting convicts to Botany Bay, during the last twenty years, has cost Great Britain an enormous sum. And by whom would our criminals be transported? By the nation, or by the different states? If by the nation, then the nation is to execute state laws, over which the national government has no control—laws different in their provisions, in their enactments, in their severity, in their tendency to increase or prevent crimes. As to the states' carrying away their own con-

victs, it would involve too many objections to permit its investigation. They would avoid the indicting, arraigning and convicting of felons from the apprehension of heavy pecuniary burthens. Transient felons, fleeing from one state to another, would escape. Massachusetts or New-York would not be anxious to punish the fugitives from Maryland or Georgia. We have mentioned a settlement some where in the Pacific ocean, because we can perceive no where else to which our views can be directed, with any thing like propriety.

It has been asserted by many, that a settlement at the mouth of the Columbia river, on the Pacific coast. might be established and sustained, for our culprits. We take it for granted that no one would seriously think of transporting convicts to this remote region by land across the western mountains, the extended spine of the Andes, several thousand miles. The disposal of one offender, in this manner, would cost more than the support of ten convicts in the State Prison, provided their periods of punishment were the same. If the journey by land is renounced, then the doubling of Cape Horn, and all the unavoidable expenditures of transportation, and of maintaining a small military force before pointed out, occur to the mind. But another consideration arises on this subject. Suppose we sentence our criminals to a residence at the mouth of Columbia river, what would be the moral consequences? Is the banishment to be perpetual or temporary? If perpetual, then we confound all the graduations of a penal code to the magnitude and depravity of the offence. We must either adopt this kind of punishment in a very limited degree, or make great and small crimes of equal criminality. If the term of residence beyond the mountains, should be limited to five, ten or fifteen years, we have no idea that hardy and resolute offenders would change in character and morals, by the execution of the law upon them. We might expect to see them return to the society which they left, with new enterprise and new hardihood. What is the object of punishment at all? The prevention of crimes by the example, and reformation of the convict—by the spectacle which is presented



to others. Would transportation to the mouth of Columbia river, have this effect? What hardened outlaw, would dread the novel and variagated scenes of a new country, where the eye is regaled with perpetual objects of wonder and delight? What felon, from the prisons of England, Ireland, France, Germany, Italy, or Spain, would find the bitterness of repentance in such a punishment? Who of our daring and active countrymen, would find their spirits broken down, and their moral depravity eradicated by such a destiny? They would consider it as an alluring excursion, and scarcely count the number of suns that should rise and set before their return. How far a collection of felons at this place, might hereafter annoy our frontier settlements, as they stretch along the receding shades of the wilderness, beyond the Mississippi; how far they might break away from the location assigned them by law, and mingle with hostile tribes of savages, and hereafter diffuse depredations along the chain of our frontier settlements, it is not necessary to inquire. The whole plan of transporting criminals from the different states, appears to the Committee, to be visionary and romantic. It has been noticed with some attention because it is always wise to suppress wild and fanciful theories, in their primeval state, before ardent and misguided votaries, adopt and defend them, in the place of systems that merit vindication. The United States can never resort to the transportation of convicts, to any distant spot, beyond the jurisdiction of municipal authorities, while the present form of government remains, and the people cherish their existing moral and civil institutions.

England transports convicts to Botany Bay. Her limited empire, her crowded population, her multitude of capital offences, her diversity of crime from her complex relations of society, may render this choice of evils necessary. Yet, if we may believe the declaration of English statesmen on the floor of Parliament, the terror of this punishment is little felt. Lord Sidmouth avered in the House of Peers some few years ago, that "it was notorious that the dread of transportation, had almost

subsided, and perhaps had been succeeded by a desire to emigrate to New South Wales." (9) In a late debate in the British Parliament, Mr. Buxton declared, "that he should be guilty of insincerity, if he were to contend that transportation were any punishment at all." (10) The expenditures of this kind of punishment have also been enormous. During twenty years past, it has not cost the British government much short of \$20,000,000 to send her criminals to port Jackson. (11) This evidence should, at least, warn the American people to be cautious in advocating a remedy for crimes that has been found ineffectual in a neighboring empire, after full trial. (12)

We are sorry to find any advocates in this country, for those corporal punishments that seem alone congenial to the temper of despotic or barbarous ages. We cannot withhold our expression of regret, that one of the most rising and flourishing members of the confederacy, where free and enlightened principles are cherished with tenacity, should have recently displayed, through some of her most distinguished legislators, a disposition to adopt penal laws, long since denounced in the United States, as disgraceful and inhuman, and as ineffectual to prevent crimes. (13) Previous to that revolution which gave birth to our present system of government, corporal punishments were common. They even prevailed to a great extent, after the colonial laws ceased to exist. Cropping the ears, branding the forehead, burning the hand, the public infliction of stripes, and scourging, and exposure in the pillory were frequent. They were rejected for milder modes of punishment, as criminal jurisprudence attracted the attention of our legisla-

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(9) Speech in House of Peers, June 3d, 1818.

(10) Mr. Bennet's speech in House of Commons, 1818.

(11) Debate in British Parliament, May, 1821.

(12) Mr. Roscoe, in speaking of transportation, quotes the following words from Cicero: *Exilium non supplicium est, sed perfugium protusque supplicii.* Cic. pro Cœcin.

(13) Vide late debate in the legislature of Ohio, on the Penitentiary of that state.

tures. Confinement to hard labour in our Penitentiaries was substituted ; and now, before the virtues and efficacy of this substitute have been ascertained, by a full and fair test, there is a doctrine in the land, that it is politic to return to the penal statutes, that were recently repealed, as savage and obnoxious. And why take this retrograde step ? Can it be proved, to the satisfaction of the American public, that while corporal punishments were in existence, crimes were less frequent than they are now ? Even could this question be answered in the affirmative, it would not be satisfactory, since one species of crimen falsi is peculiar to the present period of our history, from the extensive creation of banking institutions, since the Penal laws spoken of were abolished. The counterfeiting of bank notes was not known because no banks existed. But were larcenies less frequent ? Were burglaries, arson, and murder, less frequent ? We contend that they were not. But what is the just and proper inquiry to be put here ? It is simply this : Would corporal punishments go farther to prevent crimes, than solitary confinement to hard labour in our Penitentiaries ? For this is the punishment which we hope yet to see universally adopted. On this point the Committee have no doubt ; and they believe, that should this desired improvement take place, and be amply tried, not only corporal punishment, but all other substitutions for the Penitentiary System, would be relinquished, through universal conviction. Several objections occur to cropping the ears, slitting the nose, branding the forehead, public whipping, and similar modes of treating felons. First, no facts prove that such punishments are more effectual in preventing offences, than our present Penitentiary System, defective as it is. In the second place, they render men desperate, insensible to shame, and dead to any appeals, either legal or moral. What has any person to look or hope for, in this world, when his features are so deformed as to attract the scorn of the public ; or what has the culprit to anticipate, who has received the stripes of a constable, amid a crowd of spectators, who will retail and communicate his disgrace to the second and third



generation? Thirdly, they not only render offenders desperate, but they release them immediately, and enable them to exhibit this desperation in the perpetration of new crimes. There is at least one advantage in our Penitentiaries; while villains are shut up, society are relieved from their depredations and outrages. Not so, if the space of fifteen minutes finishes their punishment. (14) Fourthly, the frequent infliction of cruel punishments inures the public mind to barbarities, and destroys the advantages intended to be reaped from the terror of example. People can become habituated to spectacles of horror, and feel no pangs at beholding them. We can scarcely conceive of a more shocking sight than the flocking of boys to a whipping post, to enjoy, in revelry and mirth, the tortures of fellow beings. All solemnity, all the benefits of example, are lost, when offenders are constantly doomed to suffer in ignominy, as a mark for the gazing rabble to shout at. Nor is it conceived that the American people would tolerate the idea of disfiguring the persons of our citizens, with hacking, branding and scourging. But we are told that all arguments drawn from the cruelty of this kind of punishment should be abandoned, since solitary confinement is still more cruel. This is a specious doctrine—not a sound one. Between physical and moral suffering, there is a wide difference. The first denotes the propensities and passions of a savage state of man. In Morocco, small offences or misdemeanors, are punished by the bastinado, or beating the backs and legs with leather thongs, something like the cat-o'-ninetails formerly used at the whipping posts in this country; and larceny, by cutting off a leg or hand, or other bodily disfiguration. There is also a method of tossing up criminals, so that they may fall on the head and fracture its bones. Montesquieu remarks, when speaking of the Japanese, that cruel and horrid punishments harden the public mind, and tend to render penal laws ineffectual. Of all laws, we may say that those of Japan are the most severe, and yet

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(14) Vide Mr. Rawle's letter, App.

the most impotent. The administration of laws, distinguished for their severity, has no tendency to render persons more honest or more serviceable to the public, who have incurred its vengeance. It rather tends to create hardihood, the absence of shame, and the loss of self-regard. Solitary confinement may be called a cruel punishment, although it is not entitled to that appellation, however severe its operation may be. But admit its cruelty—to what does it lead? To reflection, to repentance, to the amendment of the criminal. His features and his limbs remain as God has made them. If he forsakes the ways and devices of the wicked, no external deformity remains, a perpetual mark of public ignominy, when crime is expiated and guilt done away. We trust and hope, that the day is far distant, when the free states of the union will retrace their steps to a system of laws, that would be at war with civilization, humanity, the principles of our institutions, and hostile to the lessons inculcated by the experience of other times. (15)

Singular as it may appear to the enlightened and reflecting of other nations, there is a disposition sometimes indicated in this country, to adopt capital punishments to a wide extent. Because the Penitentiary System has been grossly perverted, and its principles lost sight of, by those who have been entrusted with its administration; because an experiment has failed before it has been adequately tried; in order to preserve our property and protect our persons, there are occasional bursts of popular feeling and discontent, that denote symptoms of cruelty and error, inconsistent with the political institutions of the nation, and the reason on which they rest. Without any inquiry why the Penitentiary System has disappointed the hopes of the states; without any reflection on the practicability or impracticability of improving and perfecting it; capital punishments are urged as the only means of preventing crimes. Suppose we adopt this remedy and execute criminals for all the

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(15) In relation to corporal punishments, the Committee widely differ from Mr. Raymond. Vide his letter, App.

felonies, that are now punished by hard labour in the different State Prisons ; what would be the effect ? The Committee consider that two consequences would arise : first, the laws would not be executed ; secondly, if they were rigidly enforced, executions would lose their terror by becoming common. It was a deep rooted abhorrence to cruel punishment, that first diminished the number of capital felonies in the United States ; and it is to be hoped, that the influence of early education and the diffusion and inculcation of Christianity for the last few years, have not had an influence to render us less humane or less careful in establishing sanguinary laws. Let us amend our Criminal Codes in the different states to-morrow, and render counterfeiting, passing counterfeit bank notes, burglary, breaches of the public trust, grand larceny, conspiracies, and swindling, or obtaining goods, chattels and money, under false pretences, capital felonies ;—what would be the effect ? More than two-thirds of these crimes would probably go unpunished, and therefore be committed with fresh impunity ; for how many would not shrink from being informers, if convinced that by their testimony alone, the life of a human being, perhaps the parent of a large number of children, was to be taken ? What would be the reasoning of a large portion of American citizens in such a case ? Would they not say to themselves, it is aggravating to have our rights infringed upon, but better to endure this than be the instruments of sending a fellow mortal out of the world ? Such feelings might be derided, as the offspring of weakness and folly ; but they do exist, and will exist, until our sentiments, as a nation, undergo a very radical change. Grand Juries would be backward in presenting indictments, when death was to be the probable consequence. They would find it more consonant to their feelings to dismiss complaints than to find a bill upon them. There would also be a difficulty in procuring juries to convict criminals under cruel laws. Twelve men would have many agonizing sensations in condemning a culprit to death, for stealing property to the amount of fifty or one hundred dollars, or for passing a counterfeit bank



note of five or ten dollars. Every opportunity would be embraced to find the offender not guilty. Any doubt in the testimony, affording an excuse, would produce an acquittal. Laws to be effectual must be certain; and therefore it will be no answer to say, that if these minor depredations did escape, more enormous ones would not. If men would seldom inform, and juries shrink from convicting, on the smallest doubt, and the most slender excuse or subterfuge, what would be the consequence? Crimes would rapidly increase, because a vast proportion of them would go unpunished. Again: if the execution of criminals became an ordinary spectacle, the dread and terror of this species of punishment would be banished, and its restraints be destroyed. Mankind can be rendered familiar with horrid spectacles, by habit. The savage of our western wilderness beholds the agonies of the prisoner at the stake, with composure. The wife of the Hindoo ascends the funeral pile of her husband with a firm step. The monsters of the Inquisition feel no pangs at the tortures of their victims; and an execution in Japan, creates no more sensation than the morning clouds that obscure the sun. The Romans beheld the blood of their gladiators, without the movement of a nerve or a muscle; and in Great-Britain, at this day, the execution of half a score of felons, calls forth no expression of horror from the populace. In time, we should betray the same indifference. The frequent repetition of similar scenes would habituate our eyes to the suspension of men, women and children, from the gallows. There is a habit of thought, as well as a habit of action; and when, by continual occurrence in the mind, any kind of punishment becomes naturalized to our tone of feeling—abhorrence is overcome.

But what do we do, in advocating capital punishments, in some ten or fifteen kinds of felony in the United States? We do violence to the moral feelings of the people of this country, which involuntarily repel all sanguinary laws. We go further. We disregard the solemn lessons of an experience that is drawn from the history of successive ages; for, we would

ask, in what period of national history have capital punishments suppressed the crimes which they were designed to prevent? Are we not compelled to believe that they have rather promoted, than diminished, the evils they were intended to destroy? Take the Roman empire under the Cæsars, during the mild reigns of her most humane and virtuous emperors, who relaxed the rigor of the Penal laws; crimes were less frequent than under those of her most furious despots, who promulgated bloody edicts in every direction. Alfred came to the English throne amid confusion, war, and licentiousness. He abolished all capital punishments excepting in three kinds of felony, treason, murder, and arson. Instead of increasing, public offences rapidly diminished, and the security of persons and property, during the peaceful and beneficent reign of this virtuous prince, has been a distinguished era in the annals of the British empire. The reigns of Henry 7th, Henry 8th, and of Queen Elizabeth, of England, are remarkable for the number of felonies which were rendered capital, and yet they are noted for the number of criminal offences perpetrated during their existence. Lord Bacon considered the penal laws the most odious feature of the government of Henry 7th. During the reign of Henry 8th, there were 72,000 executions for robberies; and while Elizabeth was on the throne, they were peculiarly numerous. The contrast that modern history has exhibited, between the operation of Penal laws in Tuscany and the Papal dominions, is striking and pertinent. When the late Grand Duke of Tuscany ascended the throne, his dominions were overrun by robbers and assassins. Robberies and murders were common, and the wheel the rack and the gallows were seen in all quarters. On reading the celebrated work of the Marquis Beccaria, he entirely abolished capital punishments. An army of executioners, with their instruments of death, were dismissed, and milder laws rendered Tuscany one of the best ordered states in Europe, and no where were life and property more safe. Punishments were proportioned to the offence, and executed with strictness and certainty. In the Papal domin-

ions, separated from Tuscany by a small dyke, the severity of punishment was kept up, and crimes continued. Robbery and homicide still continued to be committed. He who robbed was executed. He who robbed and murdered, suffered no more. The consequence was, that he who was robbed was also murdered. Sir William Blackstone, after speaking against the too frequent infliction of capital punishment, asks if they have been found more salutary than those of a milder character. "Was the vast territory of Russia," says he, "worse regulated under the late Empress Elizabeth, than under her more sanguinary predecessors? Is it now, under Catharine II. less civilized, less social, less secure? And yet we are assured, that neither of these illustrious Princesses have, throughout their whole administration, inflicted the penalty of death. And the latter has, upon full persuasion of its being useless, nay even pernicious, given orders for abolishing it entirely, throughout her extensive dominions." (16)

Were atrocious crimes more frequent in France under the reign of Napoleon, than under the government of any one of the Bourbons, for a half a century before him? We know they were not. And yet he greatly moderated the Penal Code, and assumed the sceptre of power, after the revolution had poured its overwhelming torrents of licentiousness, over the kingdom.

But why thus range the globe for illustrations? There is a nation in the fulness of life and glory, to whom we can refer. England is before our eyes. The present state of her Penal laws is worth the volumes of centuries. We know of no nation in existence, which has so many capital felonies as Great-Britain, and we know of none where capital punishments are so numerous, and Penal laws more ineffectual to compass their ends. If the infliction of death is so well calculated to deter men from committing offences, why do they wholly fail to effect this result in England? Criminals are constantly executed for forgery, and still forgery goes on. Felons are continually executed for

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(16) Commentaries, vol. 4, p. 10.



stealing, and still thefts increase. They are committed under the very gibbets where thieves are hung. What is this but experience putting down theory. A man is executed for picking a pocket, and during the execution, three-score pockets are rifled, and the suffering of one criminal leads to the liability of twenty or an hundred more. The British Parliament have enacted that the passing of a one pound bank note shall be punished with death. What has been the effect of this statute in suppressing that crime? In 1814, there were 10,343 convictions under this act; in 1815, 14,000; in 1816, 21,000 and upwards; and in 1817, 23,000 and upwards. Is this preventing felony by the taking away of life? (17) Mr. Buxton, in his late speech in the House of Commons, states expressly, that in the face of more than 200 capital punishments, crimes that fall under them, continue to multiply. The Criminal Code in France is less severe than that of England, and yet, with more than double the population of Great-Britain, the number of her criminals is less. But there is another great evil in the accumulation of capital offences in England—one that we have mentioned in our arguments—the laws are not executed. The injured will not complain, witnesses will not appear, Grand juries will not find indictments, Petit juries will not convict, and if they do convict, the sentence is often rendered inoperative. The same evil has existed for generations. “So dreadful a list,” said Sir William Blackstone, when speaking of the penal statutes inflicting death in England, “instead of diminishing, increases the number of offenders. The injured, through compassion, will forbear to prosecute; juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the offence; and judges, through compassion, will respite one half of the convicts, and recommend them to the royal mercy.” (18) The investigations of the House of Commons, the witnesses examined at the bar of that body, the speeches of eminent men in

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(17) Vide Report of Select Committee on the Criminal Laws, to House of Commons, 1819, p. 79.

(18) Black. Com.

both houses of Parliament, go far in settling this grand fact. Sir Samuel Romilly, in a speech before the British Legislature on the 25th March, 1818, stated, that "he would take the present opportunity of mentioning the state of the law, as derived from the returns on the table, with respect to the act making it capital to steal within a dwelling house to the amount of forty shillings. Within eight years, down to 1816, no less than 1097 persons had been tried for this offence. Of these, 293 only had been capitally convicted, and *not one had been executed*. In 1816, 131 more persons had been tried, of whom 49 had been capitally convicted, and *one* (whose case was accompanied with great aggravations) executed. So that of 1228 individuals tried, 342 only had been capitally convicted, (the juries either acquitting the 886, or finding them guilty of stealing to a less amount,) and only one person executed." In 1732, there was a statute passed in England, rendering frauds, in cases of bankruptcy, capital crimes. Since that period, it is ascertained that there have been 40,000 bankruptcies; and yet Basil Montagu, Esq. stated, in a late examination before a committee of the House of Commons, that there had been but nine or ten prosecutions during 37 years, and but three executions, although the frauds within the statute were common and proverbial. (19)

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(19) Rep. House Com. 1819, p. 79.

Mr. Buxton, in a late speech on the Criminal Code of England, adduces the following extract from a speech of Queen Elizabeth to her Parliament:—"A law without execution, is but a body without life, a cause without an effect, a countenance of a thing, and indeed nothing. Pen, ink and paper, are as much towards the governance of the commonwealth, as the rudder or helm of a ship serveth to the governance of it, without a governor, and as rods for correction without hands. Were it not mere madness for a man to provide fair torches to guide his going by night, and when he should use them in the dark, to carry them unlit? Or for one to provide fair and handsome tools, to prune or reform his orchard or garden, and to lay them up without use? And what thing else is it to make wholesome and provident laws in fair books, and to lay them up safe, without seeing them executed? Surely, in reason, there is no difference between the examples, saving that the making of laws without execution is in much worse case, than those vain provisions before remembered; for there, albeit, they do no good, yet they do no hurt; but the making of laws without execu-

Hence we see that when sanguinary laws are executed, they fail to prevent crimes, and that when they are peculiarly severe, they remain a dead letter; and thus directly promote, instead of suppressing crimes—entailing on the community a complication of immoralities. The dangerous tendency of frequent capital punishments, and their total failure to control and restrain the vicious propensities of mankind, have long been perceived and enforced, by men who have shone among the first luminaries that ever diffused light and truth through the world. More than three hundred years ago, that learned and excellent man, Sir Thomas More, assailed the enormity of the Penal Code of Great-Britain. His writings on criminal law, have not yet lost their impression on the feelings of civilized man. About two hundred years ago, Sir Edward Coke, that venerable giant of jurisprudence, on whom we yet cast back our eyes with reverence and admiration, entered his solemn caveat against the taking of human life by laws like those of his own country. “What a lamentable case it is,” said he, “that so many Christian men and women should be strangled on that cursed tree of the gallows: insomuch as if in a large field a man might see together all the Christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed with pity and compassion.” (20) He then proceeds to advise reform. Sir Francis Bacon, the Lord Chancellor of England, whose writings awoke the long slumbers of human reason, remarked to Queen Elizabeth: “so it is most certain that your people are so ensnared in a multitude of Penal laws, that the execution of them cannot be borne” Sir Walter Raleigh advocated the same principles,

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tion does very much harm; for that breeds and brings forth contempt of laws and lawmakers, and of all magistrates: which is the very foundation of all governance, and therefore must needs be great and heinous in those that are the causers of this. Indeed, they are the very occasions of all injuries and injustice, and of all disorders and unquietness in the commonwealth.”

(20) Vide Epilogue to his fourth Institute.



as early as 1611 ; Chillingworth in 1640, and Doctor Johnson in 1751. In 1750, the increase of certain crimes that were capital felonies, roused the attention of the British Parliament. A committee was appointed in the House of Commons, consisting of the Earl of Chatham, Mr. Pelham, then Prime Minister ; Mr. Grenville, Mr. Littleton and Charles Townsend, successively Secretaries of State ; Sir C. Loyd, then a distinguished member of the English Bar ; and Sir Dudley Ryder, then Attorney General, and afterwards the Chief Justice of England. These great ornaments of the British empire recommended the exchange of death for other adequate punishments, and introduced a bill that was passed in the House of Commons and defeated in the House of Peers. Twenty years afterwards, in 1770, another committee, consisting of Charles James Fox, Sir William Meredith, Sergeant Glynn, and Sir C. Banbury, was appointed, who also reported a great reduction of capital punishments, and introduced a bill that passed the House of Commons and was rejected in the House of Lords. "Neither was that bill opposed," said Mr. M'Intosh, in one of his eloquent speeches in Parliament, "by any of the great ornaments of the House of Lords of that day, Lord Camden or Lord Mansfield ; it was thrown out on the opposition of others, whom I will not name, and whose names will be little known to posterity." Since that day, such men as Mr. Pitt, Lord Erskine, the Marquis of Lansdown, Mr. Canning, Lord Grey, Sir Samuel Romilly, Mr. Roscoe, Lord Lauderdale, Sir James M'Intosh, Mr. Whitbread, Mr. Wilberforce, Mr. Buxton, Mr. Colquhoun, and others, whose rank and talents are well known to the American public, have made strenuous efforts to procure the diminution of capital punishments in England. But why, we shall be asked, has England still retained her Penal Code, against the genius and influence of such a host ? And we will ask, why has she tolerated pauperism by the most careless policy, since the days of William and Mary, when she was first loudly warned against this evil ? Why did she tolerate the slave trade for years after Fox, Pitt, and Wilberforce, united their exer-

tions for its abolition? Why does she oppress the Catholics of Ireland, and spread the gloom of bondage over the land of fame and genius? Why tolerate the errors of her representative system? Why do nations ever oppose the voice of reason? Why, in fact, have the empires and kingdoms of the earth slept in chains for ages? Why have rational systems of government and rational laws, been shut out for centuries, from the pale of civilized communities? Or, to come nearer home, why is there a disposition in this country to pass over reason and christianity, to the adoption of punishments that would disgrace the pages of American history? But the day of reform is fast approaching in England, and the awful effects of capital punishment are spreading a cloud over the face of society. Crimes and outrages increase, and the destruction of human life but augments their atrocity. The last Report in the House of Commons, and the debates in the same body, carry the strongest conviction that the Criminal Code of England cannot last. Mr. Colquhoun, who was the greatest police magistrate that England ever has seen, and who has written more largely on the subject of police than any other man, uttered these unqualified words, to the committee that represented the British nation, four years ago: "It has occurred to me, that except in cases of high treason, murder, sodomy, arson, and other offences, accompanied with violence to the person, the punishment of death may be dispensed with, under circumstances advantageous to criminal justice." (21) If any thing further is wanting to illustrate the fact, that the criminal laws of England are at variance with the moral feelings of the British community, we could successfully allude to the late publication of Mr. Roscoe. (22) In this invaluable treatise, talents, philosophy and research, are blended, in a triumphant vindication of the principles of humanity. No man can answer it. The illustrious author condemns the extensive adoption of capital punishments, and recommends the Penitentiary System to the English na-

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(21) Examination before Select Com. House Com. Report 1819, p. 66.

(22) Observations on Penal Jurisprudence and the reform of criminals.

tion. He thus directs their attention to the United States: "Fortunately, however, whilst the civilized world has been groaning under the effects of a barbarous and sanguinary Code of laws, mitigated at times by the milder spirit of philosophy, another system has arisen, which from obscure beginnings, has gradually attracted more general notice, till at length it has been adopted in practice on an extensive scale and affords a favourable prospect of ultimate success." (23)

And with these lights shining in our eyes—with this deep voice of experience sounding in our ears, shall we cast off our moral feelings, and all the principles of our early education? Shall we renounce the spirit of our constitutions, as well as the counsels of sound policy and humanity, and fill our statute books with bloody laws? Are we ready to behold the instruments of death and torture in our peaceful villages, where education and moral maxims have gained dominion? Are we prepared to see the gibbet erected along the borders of our highways, and by the side of the pleasant fields of the husbandman? Are we willing to have the populace of our towns and cities constantly pouring forth, as to a theatre of sport and revelry, to behold the last sufferings of capital offenders? On this point, we shall say no more. Against the extension of capital punishments, the Committee feel it their duty to remonstrate, in every proper shape and manner—at all times and all appropriate occasions. And they regret that the sentiment, once expressed by Sir Henry Spelman, is forcibly brought to mind at this enlightened period of the world. He once remarked, when speaking of penal laws, that in proportion as governments were rendered better, and civilization had advanced, human life seemed to be rendered of less worth and consequence in the eyes of legislators and lawgivers. (24)

The anxiety which prevails in the United States, on the sub-

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(23) *Ib.* page 83.

(24) See the head **CAPITAL PUNISHMENTS**, in the Appendix. Let it be read by every American citizen, who thinks and acts for himself. The testimony before the House of Commons, and Mr. Roscoe's arguments, cannot be refuted.



ject of the Penitentiary System, is deeply cherished by the civilized nations of the other continent. The third Report of the Society for the improvement of prison discipline, and for the reformation of Juvenile offenders, embracing more than two hundred pages, combines a mass of the most interesting matter. This association is sustained by the first men in England, whether we consider rank, talents, or wealth ; and its funds are ample for the grandest purposes. It is carrying reformation through the dominions of the British crown, and collecting information from all quarters of Europe, and diffusing it back again, through countless channels.

Many of the evils displayed in our Penitentiaries, have been found in the prisons of England. The want of classification, the want of constant labour, the evils of continual intercourse, the increase of depravity, and the pernicious tendency of granting pardons and respites, are among the prominent defects pointed out.

Solitary confinement is daily gaining advocates. The Stepping Mill, for the grinding of corn, by which any number of convicts can be employed, without any departure from all necessary restraints, is brought forward by the society with much zeal.

“A good prison,” says the Report, “is a school of moral discipline, where incentives to vicious propensities are removed—where drunkenness and gambling are superseded by abstinence, order, and decorum—where, by personal seclusion and judicious classification, the evils resulting from contamination, are prevented—where the refractory are subdued by punishment, and the idle compelled to labour until industry shall become a habit. These are the leading features of a salutary system of gaol management : and it seems wisely ordered, that this discipline should form, at once the medium of reformation and the instrument of punishment. That a well regulated system of prison discipline,” continues this document, “represses crime, is proved by the best possible evidence.” It further states, “that in a great number of instances, offenders, even the most

hardened, who have for a reasonable time been subjected to a well regulated system of discipline, *do abstain from the further violation of the law, and have in a variety of cases been known to abandon their criminal pursuit.*" It then proceeds to illustrate this position, by shewing that while in prisons not under good discipline; the re-committals will vary from fifteen to fifty per cent: those to prisons under good management will vary from one to seven per cent. (25)

These important facts afford evidence that should induce the American people to persevere in every rational effort, to improve the management of our Penitentiaries. It shews that while capital punishments are without avail in England, that exertions to repress crime in the same country, by the judicious management of criminals, meets with signal success.

We are fully aware, that great consideration is attached to the Penitentiary System in the United States, by the enlightened men in Europe, who are now combining their exertions to produce a radical reform in Penal Jurisprudence. Nor are improvements in the execution of Penal laws confined to England. The Report of the Prison Society of Paris, shews that much is doing in France, to combine punishment with reformation. In Ireland, the labours of the Dublin Association, for the improvement of prisons, are working salutary changes. In Switzerland, some useful reforms are taking place. In Russia, an Association for the same purpose has been created: the location is at St. Petersburg, under the sanction of the Emperor Alexander, who, is giving force and authority to its proceedings, throughout his wide dominions. In Sweden, and Norway, information of the condition of all the jails is collecting under the patronage of the two governments, that the hand of correction may be successfully applied in the treatment of criminals

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(25) Preston, 4 per cent.—Wakefield, 4 per cent.—Bury, 5 per cent.—Devizes, the general average, about 3 per cent. and for felons, only 1 per cent.—Bodurin, 3 per cent.—Ipswich, 3 per cent.—Lewis, 6 per cent.—and even at Gloucester, where the prison is particularly crowded, only 7 per cent. REPORT, p. 86.

after their sentence to public prisons.(26) Let them not feel their prospects darkened—let not their efforts be weakened, by the partial failure of our own system. Not a fact remains on record—not a defect has been revealed, in the progress of thirty years, to convince us that it cannot be rendered all that it was ever expected to be. And the Committee do feel themselves bound to lay down the following broad positions :

*First.* That the Penitentiary System, as it now exists, in the United States, with all its defects, is preferable to the former systems of punishment in this country.

*Secondly.* That it is capable of being so improved, as to become the most judicious and effective system of punishment ever known in ancient or modern times.

*Thirdly.* That where it has been properly administered, as it formerly was in Pennsylvania and New-York, it has succeeded and answered the expectations of its early friends.

*Fourthly.* That solitary confinement, by night and by day, combined with other regulations suggested in this Report, will remedy all existing evils.

*Fifthly.* That it is the duty of the different states of the Union to proceed, without delay, to its improvement and perfection.

*Lastly.* That corporal punishments and the infliction of death, would not prove congenial to the moral sentiments and feelings of the American people : and that the transportation of convicts, is visionary, impracticable, and would not prevent crimes and offences, even if it were adopted in our penal statutes. The Committee hope and trust, that enlightened, humane, and public spirited individuals, of the different States in the Union, will feel the responsibility that rests upon this country in relation to the System of which we have so fully spoken.

This is no common age in the annals of mankind. More is now doing to ameliorate the condition and to promote the happiness of the human race, than any period of society has accomplished. The errors and vices of preceding centuries are in the way of correction. There is a unity of thought, design,

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(26) Vide App. to the Report last alluded to.



and action, among the most powerful empires of the earth, that stands a moral phenomenon in the history of governments. At length the spirit of Howard begins to walk abroad over the face of Europe; at length his voice is heard from the dark abodes of the wretched and forsaken of our species—from the peaceful vallies of Switzerland, to the Kremlin of Moscow.\* Penal jurisprudence gathers around it the regards of the jurists and the lawgiver, and commands the illustrations of genius and reflection. Its importance to the welfare and safety of nations is duly considered, and one improvement is rapidly succeeding another. What do we then owe to ourselves—what do we owe to the world as a nation? Are we to permit caprice and prejudice to govern us, on a subject interesting to ourselves and interesting to mankind, or are we to remember that a great experiment in civil policy, blended with the dearest interests of humanity, should not be abandoned, until tested by fidelity and candour? If a mild Criminal Code, can be fairly tried any where, it can be tried in this country. Our institutions were established on the will of the people. They were the offspring of enlightened views and independent feelings. Education is more generally diffused here, than elsewhere on the civilized globe. The civil relations of life are less complex—there is less of poverty and less of oppression. The cry of bread and the approach of general want, are never known: popular sentiment is disposed to mildness, and to the adoption of virtuous restraints. If the Penitentiary System should be abandoned, in such a country, what would the legislators of Europe hereafter say? What would those who must hereafter raise their voices in our own halls of legislation, say? A System founded on benevolent principles, was tried for thirty years under circumstances the most propitious: it terminated in failure and disappointment. Why should we again traverse the same

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\* "Instead of boasting of the name of Howard," says Mr. Roscoe, "we ought rather to blush at its recollection, when we reflect that it is upwards of forty years since the publication of his work, and that little improvement has yet been made."

ground of experiment to meet with the same calamitous results ! The causes of its failure would not descend to an impartial posterity, with the story of its unfortunate termination. A lasting and unqualified condemnation would settle over its untimely grave. Devoutly do we trust that this train of prospective reflections will never exist in sober reality. Is an attempt to impose the Criminal laws of nations worthy of a free people ? Is an attempt to wipe from the Penal codes of empires the shades of barbarism and cruelty by example, worthy of christian land ? Are the interests of humanity and the elevation of our species, objects worthy of constant solicitude, among a people who have laid the deep foundations of the most rational and perfect constitution of government that the long career of six hundred centuries has produced ? When popular states, in the vigor of virtue and enterprise, forget the glorious march of the human mind that has struck them into existence—when they forget their character in the scale of principalities and kingdoms, and the hopes of the bond and the free that are embosomed in their fortunes—when such states turn back and pursue the steps that lead to the dark policy of despotic governments, the prospects of progressive improvement among mankind are indeed forlorn and discouraging. There are principles and feelings in the American nation that will produce results more grateful and benificent.

To laws well adapted to their end, and to the certain and un-deviating execution of these laws, we look for the direct prevention of crimes and the reform of offenders. These are the premises which we lay down and attempt to sustain. But we must go further ; we must endeavour to narrow down the necessary application of these laws, by the diffusion of elementary education, especially among the poorer classes of children. Deterring men from committing crimes by the fear of punishment, is one thing : creating in the mind a deep abhorrence to what is morally wrong, is another. The generous and liberal endowment of our free school establishments, more especially in our large towns and cities, is directly connected with a sacred

observance of the laws. This will lessen the number of those unfortunate beings who become the subjects of severity; and the more rare we render offences, the more force we give the influence of example, and the more restraint we impart to the sentence of a criminal tribunal. When many suffer, shame is divided, and felons mutually countenance each other. When one suffers, he stands in the solitude of disgrace and reproach, and distinction carries poignancy and retribution.

In submitting this Report to the American people, the Committee feel sensible that they have but commenced a work whose completion will require many subsequent exertions. The community is prepared for a great change, in the administration of our Penal laws; and if we have been successful in directing the views of the public to proper objects of consideration; if our ideas of existing defects in the Penitentiary System, and of the most appropriate remedies to be applied for their eradication, are calculated to awaken candid and anxious inquiry, we feel that manifold benefits may follow our labours.

The committee also feel sensible, that no time should be lost in collecting those facts, arranging those tables, and preparing those data, that will enable us to institute comparisons and to draw more perfect deductions. The history of our Penitentiaries is crude and defective. Their management has not been sufficiently uniform to afford a well tested series of facts, and to permit general demonstration. The increase of population; the changes in the internal condition of the country; the want of employment in the most populous places; the great facilities for the forgery and circulation of spurious notes, created by the rapid and impolitic increase of banking institutions, disqualify us from establishing those tests of the efficacy or inefficacy of laws, that can be found in older countries, where there is stability in all the interior relations of the State. Yet some land-marks may be erected.

In case solitary confinement should be resorted to in the United States, to that extent which would meet the views of the Committee, an important change in the Criminal Codes of the



different States would become requisite. The term of imprisonment would be necessarily much shorter than it is at present, and be graduated to the moral complexion of different offences, from the highest to the lowest crime. The first question is, how shall we render punishments effectual? The next is to what extent shall they be applied? When the entire seclusion of convicts is fully tried, the term of confinement, as we have previously remarked, can be settled.

Since the foregoing pages were written, the Honourable Samuel M. Hopkins, of the New-York Senate, has made a most interesting report to that body, on the Penitentiary System of our own state. This document will be found the last article in the Appendix. It embraces many of the views which we have advanced, and recommends the solitary confinement of convicts, in strong and emphatic language. Mr. Hopkins deserves the thanks of the public for his lucid and convincing exposition. In this country and in Europe, it will be examined with interest. It states the overwhelming fact, that since the commencement of our system in this state, no less than 2,819 convicts have been discharged out of the state prison, by pardons, and the whole number of convictions, has been 5,069. Of the whole number of felons, considerably less than one half are natives of this state, and nearly one third, are from foreign countries. The rest of course, are from various parts of the union.

The national government has no superintendence over the Penitentiary System: Its improvement devolves on the different States. The Committee will therefore send this Report into the various sections of the Union; and they hope that it will elicit, in return, the strictures and suggestions of men, who are capable of casting light on the grand inquiry which it embraces.

The Committee return their sincere thanks to those gentlemen, who have forwarded them answers to their circulars. Their letters are contained in the appendix, and will be read with the liveliest interest. In rendering this tribute of grati-

tude, they feel regret that a great majority of their circulars were neither answered nor noticed.

In conclusion, it becomes necessary to remark, that the foregoing is but a Report in part. It will be followed by a second Report, as soon as circumstances may render it expedient.

**CHARLES G. HAINES**, *Chairman of the Committee.*

(Note by the Chairman of the Committee.)

The following named gentlemen compose the Committee from which this Report emanates:—The Hon. Cadwallader D. Colden, Thomas Eddy, Esq. Hon. Peter A. Jay, Rev. James Milner, Rev. Cave Jones, Isaac Collins, Richard R. Ward, and Charles G. Haines, Esquires. Mr. Colden was Chairman of the Committee, and on him devolved the duty of drawing up the Report on the Penitentiary System. On his election to Congress, he found himself unable to attend to the subject, from the pressure of public and professional business, and Mr. Haines was selected to supply his place.









## APPENDIX.

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WE cannot forbear in this place, to quote the following articles from our different constitutions of this country, which secure to our citizens one of the greatest blessings of free government. Our fundamental principles are sound. We want nothing but Criminal Codes in conformity to them, and the proper administration of those codes, to render us an example worthy of universal and lasting imitation.

“The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be held at such place or places as the Congress may by law have directed.

“No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

“In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation : to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.”

*[Constitution of the United States.*



“No person shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him : nor be compelled to accuse or furnish evidence against himself. And every person shall have a right to produce all proofs that may be favourable to himself; to meet the witnesses against him face to face; and to be fully heard in his defence, by himself and counsel. And no person shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

“No person shall be liable to be tried, after an acquittal, for the same crime or offence. Nor shall the legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service,) without trial by jury.

“In criminal prosecutions, the trial of facts in the vicinity where they happen, is so essential to the security of the life, liberty, and estates, of the citizens, that no crime or offence ought to be tried in any other county than that in which it is committed, except in cases of general insurrection in any particular county, when it shall appear to the judges of the superior courts that an impartial trial cannot be had in the county where the offence may be committed, and upon their report, the legislature shall think proper to direct the trial in the nearest county in which an impartial trial can be obtained.

“All penalties ought to be proportioned to the nature of the offence. No wise legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. Where the same undistinguished severity is exerted against all offences, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the slightest offences. For the same reason, a multitude of sanguinary laws is both impolitic and unjust: The true design of all punishments being to reform and not to exterminate mankind.”

*[Constitution of New-Hampshire.]*

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“Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive, in his person, property, or character. He ought to ob-

tain right and justice freely, and without being obliged to purchase it—completely, and without any denial—promptly, and without delay—conformably to the laws.

“No person shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. And every person shall have a right to produce all proofs that may be favourable to him; to meet the witnesses against him face to face, and be fully heard in his defence, by himself or his counsel, at his election. And no person shall be arrested, imprisoned, or deprived of his property, immunities or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

“And the legislature shall not make any law that shall subject any person to a capital or infamous punishment (excepting for the government of the army and navy) without trial by jury.

“In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

*[Constitution of Massachusetts.]*

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“In all Criminal prosecutions, the accused shall have a right to be heard, by himself and by counsel; to demand the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his favor; and in all prosecutions by indictment or information, a speedy public trial by an impartial jury. He shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, but by due course of law. And no person shall be holden to answer for any crime, the punishment of which may be death, or imprisonment for life, unless on a presentment or an indictment of a grand jury; except in the land and naval forces, or in the militia, when in actual service, in time of war or public danger.”

*[Constitution of Connecticut.]*

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“In all prosecutions for criminal offences, a person hath a right to be heard by himself and his counsel; to demand the cause and nature of his accusation; to be confronted with the witnesses; to call for evidence in his favour, and a speedy public trial, by an impartial jury

of his country ; without the unanimous consent of which jury, he cannot be found guilty ; nor can he be compelled to give evidence against himself ; nor can any person be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers.

[*Constitution of Vermont.*

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“ And it is further ordained, that in every trial or impeachment, or indictment for crimes or misdemeanor, the party impeached or indicted shall be allowed counsel, as in civil actions.”

[*Constitution of New-York.*

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“ All criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to.”

[*Constitution of New-Jersey.*

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“ In all criminal prosecutions, the accused hath a right to be heard, by himself and his counsel ; to demand the nature and cause of the accusation against him ; to meet the witnesses face to face ; to have compulsory process for obtaining witnesses in his favour ; and, in prosecutions by indictment or information, especially, public trial by an impartial jury of the vicinage. That he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.”

[*Constitution of Pennsylvania.*

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“ In all criminal prosecutions, the accused hath a right to be heard, by himself and his counsel ; to be plainly and fully informed of the nature and cause of the accusation against him ; to meet the witnesses in their examination, face to face ; to have compulsory process in due time, on application by himself, his friends, or his counsel, for obtaining witnesses in his favour, and a speedy and public trial, by an impartial jury. He shall not be compelled to give evidence against himself ; nor shall he be deprived of life, liberty, or property, unless by the judgment of his peers, or the law of the land.”

[*Constitution of Delaware.*

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“ In all criminal prosecutions, every man hath a right to be informed of the accusation against him ; to have a copy of the indictment or charges in due time, (if required,) to prepare for his defence ; to be



allowed counsel ; to be confronted with the witnesses against him, to have process for his witnesses ; to examine the witnesses for and against him, on oath ; and to a speedy trial, by an impartial jury, without whose unanimous consent, he ought not to be found guilty.

“ No man ought to be compelled to give evidence against himself, in a court of common law, or in any other court, but in such cases as have been usually practised in this state, or may hereafter be directed by the legislature.

“ No freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

“ Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted by the courts of law.”

[*Constitution of Maryland.*

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“ In all criminal prosecutions, every man hath a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.

“ No freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment.

“ That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.

“ Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.”

[*Constitution of North-Carolina.*

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“ Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged under proper heads, and promulgated in such manner as the legislature may direct ; and no person shall be debarred from advocating or defending his cause before any court or tribunal, either by himself or counsellor, or both.”

[*Constitution of Georgia.*

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“ In all criminal prosecutions, the accused shall have a right to be heard, by himself or counsel : of demanding the nature and cause of the

accusation against him : of meeting the witnesses face to face : of having compulsory process for obtaining witnesses in his favour ; and, in prosecution by indictment or information, a speedy public trial by an impartial jury of the vicinage ; nor shall he be compelled to give evidence against himself.

All prisoners shall be bailable by sufficient securities, unless for capital offences, where the proof is evident or presumption great ; and the privileges of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

[*Constitution of Louisiana.*

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In all criminal prosecutions, the accused hath a right to be heard by himself and counsel ; to demand the nature and cause of the accusation against him ; to meet the witnesses face to face : to have compulsory process for obtaining witnesses in his favor ; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage, that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

No person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia, when in actual service, in time of war or public danger, by leave of the court, for oppression or misdemeanor in office. No person shall, for the same offence, be twice put in jeopardy of his life or limbs, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him."

[*Constitution of Kentucky.*

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"No person arrested or confined in gaol shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment, or impeachment.

"In all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof ; to meet the witnesses face to face ; to have compulsory process for obtaining witnesses in his favour ; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall

have been committed, and shall not be compelled to give evidence against himself—nor shall he be twice put in jeopardy for the same offence.”

[*Constitution of Ohio.*]

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“No freeman shall be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land.

In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favour; and, in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the crime shall have been committed; and shall not be compelled to give evidence against himself.

No person shall, for the same offence, be twice put in jeopardy of his life or limbs.”

[*Constitution of Tennessee.*]

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“In all criminal prosecutions, the accused hath a right to be heard by himself and counsel: to demand the nature and cause of the accusation: to be confronted by the witnesses against him: to have compulsory process for obtaining witnesses in his favor, and, in all prosecutions by indictment or information, a speedy public trial, by an impartial jury of the county; that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, but by due course of law.”

[*Constitution of Mississippi.*]

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“In all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and, in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the offence shall have been committed, and shall not be compelled to give



evidence against himself, nor shall be twice put in jeopardy for the same offence."

[*Constitution of Indiana.*

"In all criminal prosecutions, the accused hath a right to be heard by himself and counsel ; to demand the nature and cause of the accusation against him ; to meet the witnesses face to face ; to have compulsory process to compel the attendance of witnesses in his favor ; and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage ; and that he shall not be compelled to give evidence against himself."

[*Constitution of Illinois.*



## LETTERS.

THE following letters will be perused with deep interest. They come from persons well known to the American community. They combine latent observation and public spirit, and reflect great and lasting credit on the zeal of the authors. It is indeed to be regretted, that persons in the United States, capable of improving our laws and our institutions, are too frequently so little disposed as they are, to place the result of their reflections before the nation, or to investigate subjects vitally connected with the happiness and prosperity of the country. Would the most capable and distinguished men, in the different states, compare the constitutions and municipal laws of their respective members of the confederacy, and borrow and renounce whatever reason, time and experience dictate, great and salutary benefits would result from the policy.

The communications here inserted, were written in answer to the following

## CIRCULAR :

SIR,

The undersigned, having been appointed a Committee, in the City of New-York, to prepare a GENERAL REPORT on the results and tendency of the PENITENTIARY SYSTEM, feel a sincere anxiety to proceed under circumstances the best calculated to give a clear and satisfactory termination to their investigations. They consider the duty

confided to their fidelity and research, as one eminently interesting to the deepest interests of society. The subject of their inquiry is identified with the Penal Jurisprudence of the nation; and the final legislative decision that must be pronounced upon it, will determine, for generations, the spirit of mildness or severity, that is to mark the administration of criminal justice.

It is not to be concealed, that there is much diversity of opinion, in different sections of the United States, as to the soundness of the Penitentiary System:—by Penitentiary System, we refer to those laws which consign convicts to confinement and labour—the construction and internal regulations of our state prisons—and the designed reform and penitence of the criminals, there confined. While a great portion of the intelligent and well-informed feel confident that this system can be so improved and regulated as to answer the original designs of the institution; others advance the doctrine, that it is founded on principles that are false and erroneous, and that a more rigid treatment of the perpetrators of crimes must be embraced. Some defend the expediency of resorting to capital punishments, to transportation, or the chain, for the correction of many crimes which now constitute the higher degrees of felony.

In this state of doubt and conflict in the public mind, it is to be ardently hoped, that we may investigate and reflect, and arrive to a correct standard of conviction. We know of no better method to pursue, than to collect facts and solicit aid and light from some of the distinguished men of the nation. In appealing to their superior intelligence, judgment and reflection, we feel sensible of taking no ordinary liberty; but the interests which we are labouring to promote, are public interests—equally pertaining and equally important, to all classes and sections of the great American community.

We therefore, Sir, respectfully address the following inquiries to you, with an assurance, that whether you answer all or any of them, we shall appreciate your kindness with sentiments of gratitude.

*I. What has been the effect of the Penitentiary System, in the United States, to suppress crimes, as compared with that of the laws which existed in relation to public offences, prior to the adoption of this system?*

*II. Has the Penitentiary System failed to answer the ends of its institution;—and, if so, to what is the failure to be attributed?*

- III. *Is it politic and necessary to abandon the Penitentiary System ; or, is it better to attempt its improvement ?*
- IV. *If the Penitentiary System is to be abandoned, to what shall we resort as a substitute ?*
- V. *Would it better promote the ends of justice, and contribute to public security, to adopt capital punishments, to any greater extent than the present laws embrace ?*
- VI. *Would it be politic and practicable to transport criminals ; or, would it be consistent with the nature of our institutions, and prevent crimes, and reform convicts, to doom them to the chain ?*

The feeling and anxiety which are excited in England, and in other parts of Europe, at the present moment, on the efficacy or inefficacy of the Penitentiary System ; the pressing letters continually received by us, for the fruits of the experience and observation of this country ; —and the stress which is laid on the successful adoption of a mild Criminal Code in the United States, by many of the first characters of the old world—form an additional inducement for us to treat the subject of this letter with uncommon attention, and to solicit your opinion.

When our Report is published, we shall do ourselves the pleasure to transmit a copy to you.

CADWALLADER D. COLDEN,	} Committee.
P. A. JAY,	
JAMES MILNOR,	
THOMAS EDDY,	
CH. G. HAINES,	

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## LETTERS FROM THE STATE OF PENNSYLVANIA.

*The Honorable JOSEPH HOPKINSON, to the Committee of Correspondence.*

BORDENTOWN, Oct. 10, 1820.

GENTLEMEN,

I have received your Circular, written for the purpose of collecting information “on the results and tendency of the Penitentiary System,” and feel it a duty to reply to an application so fully entitled to respect, although I do not hope to add any thing to the facts and opinions which will be in your possession, from other sources, on this important subject. From the first experiment of this system in Pennsyl-



vania, I have feared that, leaving one extreme, shocking for its cruelty and carelessness of human life, we should pass to another, inadequate to produce the proper and salutary effect intended by human punishments—the safety of society. The experience of thirty years has confirmed, in my mind, these apprehensions, and satisfied me, that we have vibrated too far on the side of lenity, and that some change is necessary for security against the perpetration of crimes ; and for relieving us, too, from the great and growing expense of the present system. The expectation that the aggregate labour of the convicts would be sufficient for their aggregate support, or rather for the maintenance of the institution, has entirely failed in Pennsylvania. There is no doubt this subject is full of difficulties ; and it is not to be wondered, that the true point should not have been struck at the first attempt ; nor that good and humane men, recoiling from a system of blood, should have fallen into one of excessive indulgence to criminals. The plan adopted by New-York, for ascertaining the just measure of punishment, which you are now executing, promises to bring us as near to perfection, in this most interesting matter, as can be attained. To fix a *precise standard*, which shall afford, in all cases, the necessary protection to the community, without undue severity to offenders, is impossible ; but, inasmuch as the safety of the whole, or, at least, the greater and honest part of the whole, is the end to be attained, it should be the principal object of attention ; and, of course, the condition of those who make themselves obnoxious to the penal laws, must be secondary considerations. Self-defence, or a protection from wrong, being admitted to be the ground of justification of human punishments, it must be lawful and right to extend them as far as the attainment of their object shall require.

I beg you to pardon these general introductory remarks ; and will proceed to offer the answers, which occur to me, to the specified questions contained in your letter ; premising that, as I have no means here of referring to records and documents, I can only give the general results of my observation.

I. What has been the effect of the Penitentiary System in the United States, to suppress crimes, compared with that of the laws which existed in relation to public offences, prior to the adoption of this system ?

In considering this question, we should bear in mind, that the sys-

tem of punishment is not the only cause which produces the increase or suppression of crimes ; and, of course, that any comparison of the number before and after the introduction of the penitentiary plan, must not be exclusively referred to the operation of that system. The state of the country, and the condition of the people, greatly influence the production of crimes. This is particularly to be attended to in the United States, whose situation changed so rapidly and materially in a few years : and this change from general poverty and depression, to universal prosperity, began soon after the adoption of the new penal system in Pennsylvania, and especially applies to her experience of it. Again—there are certain crimes which, from their nature, can hardly be supposed to be greatly affected by the punishment which will follow them ; and their increase or diminution must depend upon other causes. Of this class is murder, always committed from motives or impulses much above any consideration of consequences : and, generally, those offences which originate in the sudden excitement of violent and ungovernable passions. A murderer (in my view) is put to death, not to prevent another man from committing the same offence, but that he may not repeat it. If penal laws, or rather the degree of punishment inflicted by them, have any considerable effect on the prevention of crimes, it must be of those which are committed with deliberation, and a certain degree of calculation of consequences. How then does the comparison stand, in relation to such offences, before and after the adoption of the Penitentiary System ?—and is any change that has taken place to be attributed to the operation of that system, or some other cause ? I can speak only of the experience of Pennsylvania, where the new system was introduced in the year 1790, or thereabout. From the observation I have made, I would say, that since that period, there has been a visible diminution of the more atrocious crimes *against property*, such as robberies and burglaries ; but an immense increase of smaller larcenies ; and yet neither the one nor the other may be attributable to the change of punishment. As to the decrease of those higher offences, that bespeak a greater degree of depravity and desperation, we should remember that the peace which followed the Revolutionary war, let loose upon society thousands of penniless and desperate men, familiar with danger, who had long been unused to the habits of industry and care, necessary for their own support, and many of whom could not find employment even if dispo-

sed to seek it. In short, the country was over-run with the idleness and vices of a disbanded army; and the general poverty of the people, with the unusual suspension of business, made it impossible to find labour for those who were willing to live honestly. We see here a productive and sufficient source of crimes prior to the year '90. The adoption of the Federal Constitution, followed up by the troubles of Europe, introduced to us a supply of wealth and spirit of enterprise, with a consequent demand for labour, that offered the most liberal and flattering temptations to industry of every description, and has been, in my opinion, the efficient cause of the diminution of the more dangerous and desperate criminals. I cannot believe that a burglar or highwayman would give over his trade, and betake himself to labour, because his punishment was changed from the gallows to the gaol, "*to be fed and clothed as the law directs.*"

The increase, for some years past, of common larcenies, and lesser breaches of the penal laws, in the city and county of Philadelphia, has been enormous. Until the year 1799, but four days of the quarterly sittings of the court of Common Pleas and Sessions were allowed, for the transaction of criminal business; and they were found sufficient for the disposal of all the cases ready for hearing. At present, and for some years past, about two weeks are occupied in the city, and as many in the county, with the criminal business, below the jurisdiction of a court of Oyer and Terminer, which is also held, from time to time, as occasion requires. A reference to the records of the courts will show the increase of the number of indictments and recognizances in every year. Such is the fact; but we cannot, with certainty, trace the increase to the Penitentiary System; inasmuch as the great accession to the population of the district, must, in part, account for it. Still, I think, the system, *as it has been executed*, is not guiltless. The manner and extent of its offending belong more properly to the second enquiry.

II. Has the Penitentiary System failed to answer the ends of its institution; and, if so, to what is the failure to be attributed? I think it has failed in some very important particulars. It has, certainly, the merit of humanity; it graduates punishments by the scale of criminality, with more justice than was done when so many crimes, widely differing in their danger to society, and their moral atrocity, were followed indiscriminately with death. But it has failed either to reform



convicts or prevent crimes. We all remember that the original friends and advocates of the system, entertained high hopes of effecting the reformation of offenders, by its mildness and discipline. I presume this hope is now abandoned, as experience has proved it to be visionary. Of the thousands that have fallen under the penitentiary treatment, how many have been reformed by it? Is there one clear, well-authenticated case? Hypocrites, and pretenders to reform, have been innumerable; who have played their tricks upon credulous inspectors of prisons; obtained their liberty, and returned to their old vocation. So far from reformation having been the effect of the system, as heretofore practised, one of its worst evils is, that by throwing a crowd of criminals together, necessarily of different degrees of depravity, they become equally wicked and corrupt, and skilled in the various contrivances to commit crimes, and elude justice. It is a college for the education of men to prey upon society. A novice, who, if kept from company worse than himself, might have been reclaimed from his first attempts. is here associated with old, hardened and skillful offenders; he hears with envy and admiration, the stories of their prowess and dexterity; his ambition is roused, his knowledge extended by these recitals, and every idea of repentance is scorned; every emotion of virtue extinguished. Instances of this sort are numerous, both in the United States and in England. I consider, then, this herding of criminals together, as a vital defect in the system. Another cause of failure may be found in the excess of lenity and indulgence shewn to convicts, in the manner of the execution of the sentence of the law; or rather in the disregard of that sentence; making their condition in sickness and in health more tolerable and indeed comfortable than nine tenths of the honest, labouring poor. One is put to sweep the gaol or gaol yard, and that is a compliance with his sentence to *hard labour*; another makes soup or boils potatoes; and another is placed at a desk, to keep books and accounts, as an ordinary clerk. All this is done under the direction and patronage or favouritism of *Inspectors of the prison*, who take upon themselves, in this way, to dispense with the judgment of the court. The least pretence of sickness is an excuse from labour; and the work done by a convict is, at no time, much more than half of what a common labourer would perform. It is idle to talk of the disgrace and shame forming any part of the punishment; nothing is considered by these men but the confinement and work;

and, at present, the first is rendered tolerable, if not agreeable, by society exactly suited to their taste ; and the last is so lightly imposed as to be rather a healthy recreation, than a dreaded punishment.

A third cause of failure of the expected effects of the system, at least in Pennsylvania, is, in my opinion, the large and unnecessary powers given to the inspectors of the prison, already hinted at, amounting in some instances, (such as have been mentioned,) to an entire abrogation of the sentence of the law. The inspectors are, generally, men of high respectability ; but their humanity, and I may say, sometimes their caprice, render them liable to very gross impositions, by the artifice and management of those with whom they have to deal. They are thus too frequently led to interfere with the strict and due execution of the law ; sometimes in the shape of general regulations ; sometimes by particular favour to individuals they undoubtedly think deserving ; but most of all by their recommendations to pardon, founded merely on the apparent or assumed repentance of the criminal, (of the sincerity of which he cannot judge,) or, what is called his good behaviour in gaol ; and *having no reference to the nature or circumstances of his crime*. This brings me to a fourth cause of the failure of the system, viz : The indiscreet, thoughtless exercise of the power of pardoning. This strikes at the vital principle of the system. It was a capital argument with the friends of mild punishments, that you would gain by their *certainly* more than you would lose in *severity* ; that laws cannot be executed which shock the good feelings and common sense of mankind ; that juries would not convict when they could, by any possibility, evade the evidence ; and that were convictions obtained, pardons must be constantly interposed to prevent the infliction of a sanguinary and disproportionate punishment. All this was to find a remedy in the Penitentiary System, under which condign punishment was infallibly to follow the detection of the offender. The facility of granting pardons, most generally on the recommendation of inspectors, but often of persons having no knowledge either of the criminal or his crime, has greatly impaired the foundation of the system ; and deprived us of the uses that might have been derived from it under a more rigorous execution of its provisions. The experiment at least would have been more fair and satisfactory. Except in very rare and extraordinary cases, a pardon should be founded only on circumstances of excuse or alleviation attending the commission of the

offence, but insufficient to warrant a legal acquittal; or on the discovery of facts unknown at the trial, which would probably have produced an acquittal; but to make the good conduct of a convict, under the sentence of the law, a reason for remitting the sentence, is not only unjust, as it destroys the relation that should subsist between the crime and its punishment, and impolitic as it affects the general operation of the law; but opens a door, and holds out a premium for fraud and hypocrisy, which all the sagacity and care of the inspectors cannot guard against.

III. Is it politic and necessary to abandon the Penitentiary System; or is it better to attempt its improvement? I would not abandon the system; but attempt its improvement; by limiting the power of the inspectors, on the treatment of the prisoners, so as to prevent any material evasion of the sentence; by checking the practice of pardoning; and most of all, by substituting *solitary confinement* (for shorter periods if necessary) in the place of the present mode of assembling the convicts in a common yard or workshop; and putting a dozen or twenty of them in the same room to sleep. Work should be an indulgence, or amelioration of the punishment; the most atrocious offenders should be confined separately, and have nothing to do. This change might be applied only to crimes of a high grade; and petty offenders dealt with as heretofore. By this means, the punishment of the most desperate and abandoned would become a terror to them; and the evils avoided that arise from the communication between the convicts, which now unavoidably takes place. Young offenders, kept from the more experienced, would have no means of improving their skill in iniquity, or hardening their hearts against repentance; and, if reformation can be hoped for, under any circumstances, it must be when the culprit is left to his own reflections,—his conscience his only companion; and separated from those who would confirm his evil propensities, and ridicule his attempts or intentions to reform them.

IV. The answer of the third inquiry, renders a consideration of this unnecessary.

V. Would it better promote the ends of justice, and contribute to public security, to adopt capital punishment to a greater extent than the present laws embrace?—In Pennsylvania, murder of the first degree only, is punished with death; and I am satisfied it would not be politic to attempt to extend this punishment further in that state. It is difficult to execute the law as it now stands; and clear cases of mur-



der of the first degree, are frequently pronounced by Juries, to be of the second, merely to evade the sentence of death. For my own part, I confess, that, while I would not punish any depredator upon property with a forfeiture of life, there is one other crime I would make capital, I mean RAPE. Of course I presume a case clearly made-out and proved, in all its circumstances, to the satisfaction of the court and jury. As to the facility of making the charge, and the difficulties of defence, they are matters to be considered at the trial; but when a conviction is made, on undoubted testimony, I do not see why it should not be followed with the utmost severity of the law, whatever it may be. In many cases the victim of the brutal offender would have been less injured by the loss of life; and her friends would have had a surer consolation, than under this violence to her person, from which no purity of mind can redeem her; but which must destroy every hope of happiness in this world.

VI. Would it be politic and practicable to transport criminals; or would it be consistent with the nature of our institutions, and prevent crimes, and reform convicts, to doom them to the chain? As to transportation, I do not see how it is practicable. How can it be done by an individual state? Can a state obtain a distant territory; a proper place; or provide the means of transporting the convicts to it, and of confining them to it, and supporting them there? It is clearly impossible that each and every state can have a separate deposit; and it is almost equally difficult for them jointly to fix on one; to apportion the expense of transportation; of keeping up the establishment; and to agree upon the appointment of the necessary officers, and force to be kept there, and the rules and regulations which should govern the settlement. As to the government of the United States, if willing to volunteer its services, and undertake the trouble, expense, and superintendence of such a settlement, for the whole, it seems to me to be, at least, doubtful whether they have the power to appropriate the treasury of the United States in this way. Constitutional power is sharply inquired into when it puts its hand into the purse of the nation. I do not exactly understand what is meant by dooming criminals to the chain; where, and for what purpose it is to be done; but I am satisfied no punishment of this sort could have any effect in reforming convicts; but would rather render them more hardened and desperate on their liberation. I forbear to extend my observations on this head, because, be-

ing of opinion that solitary confinement, judiciously regulated, offers the best chance, both of reformation, and the prevention of crimes, I would give it a fair trial before I would resort to any other experiment.

I have thus, gentlemen, given you my ideas on the several questions proposed, without fastidiousness or reserve ; believing you would receive them as an evidence of my good will to your excellent undertaking ; and not as pretending to any particular knowledge of the subject ; or bespeaking an overweening confidence in my opinions. If I shall add but one useful hint to the mass of information you will doubtless collect on this all-important subject, I shall be proud even of furnishing that mite to your success.

Most respectfully,

Your obedient servant,

JOS. HOPKINSON.

Messrs. C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES.

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*From Bishop WHITE, to the Committee.*

PHILADELPHIA, Nov. 8. 1820.

GENTLEMEN,

Your letter, dated Sept. 1820, addressed to me as President of the Philadelphia Society, for alleviating the miseries of public Prisons, was duly laid before them, and they have directed me to answer it as follows :

The Penitentiary System in Pennsylvania, has, in a great measure, answered the purposes contemplated by its founders, so far as it could be conducted upon its original principles, and so long as the prisoners could be kept separate from each other, and classed, and managed, according to the plan proposed by the friends of the System ; but the prison now used in this city, is not much larger than it was thirty-five years ago, since which time there has been nearly a threefold increase of the inhabitants of the state, from all parts of which criminals are brought to the prison.

Having had so long an opportunity of observing the effects of the

Penitentiary System, this Society place full confidence in its efficacy, and have no doubt that if a Penitentiary was established, sufficiently large, and so constructed as to keep the prisoners properly separate during the time of their meals, and labour, and sleeping, if no pardons were granted, but in extraordinary cases, and if moderate diet, and solitary confinement were properly attended to, its efficacy would soon be evident.

In reply to your queries, we can state, 1st. The effect of the Penitentiary System in Pennsylvania to suppress crimes, as compared with that of the laws which existed in this state, in relation to public offences prior to the adoption of the System, has been very great, and highly gratifying.

2d. We acknowledge that the practice under this system, has not fully answered the ends of its institution—and this is to be attributed, with us, in a great measure, to the want of a proper establishment, in which the old convicts could be kept separate—also to the deficiency of providing suitable employment. The frequency of pardons, and the desolate condition of the prisoners when discharged, are also great obstacles to their reformation.

3d. To abandon the System, would not, in our opinion, be politic or necessary; to attempt its improvement, should be the future business of the friends of humanity.

4th. No substitute offers to us, in case of the abandonment of the System.

5th. We do not believe it would better promote the ends of justice, or contribute to public security, to adopt capital punishment to any greater extent than the present laws embrace.

6th. We consider transportation as inexpedient, and think, that if the Penitentiary System were carried into effect, the other would be unnecessary. The chain has never produced any good effect—but could a full trial of solitude, labour, and moderate diet, be made, under the direction of suitable agents, it is believed, nothing further would be requisite.

Signed by order of Society,

WM. WHITE, President.

Messrs. C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES.



WILLIAM RAWLE, Esq. to the Committee.

PHILADELPHIA, Sept. 19, 1820.

GENTLEMEN,

I have had the honor to receive your letter of enquiry, relative to the Penitentiary System; and having no doubt that you will be fully furnished by others with details not in my power to give, I proceed to express my opinions generally, in respect to the interesting subject of your enquiry.

The first and second questions, may be answered together. In Pennsylvania, the number of the highest order of crimes, has, I think, diminished, since the adoption of this system—taking into view, the increase of our population.

In respect to offences of the lower grade, it has operated most beneficially, by this *abstraction of number*, during the confinement imposed by law. In this respect, (if in no other) society receives a manifest advantage. Formerly, after suffering the established modes of punishment, whipping, the pillory, &c. the convict, (if able to pay the fees) was at once turned loose upon the world, degraded, and desperate, and for want of other support, compelled immediately to renew his depredations, or to starve. Now, society at least gains the benefit of his absence, for the term of his sentence. That the system has not yet (with us) fully succeed, in practice, is not to be denied. A sincere reformation of the offender has seldom been produced, and even if it exists, is seldom believed: individuals generally turn with distrust and apprehension from him, who appears before them tainted with the infliction of such a sentence. The inability to obtain an honest livelihood, too frequently drives these unfortunate beings to a repetition of their bad courses, and renders them again and again, tenants of the prison.

To remedy this evil, we want another institution, in which the convict, having served out the time of confinement, should, on application, be sure of finding employment. This should be under public regulation, and at further expence. Entrance should be voluntary, but some restrictions should be imposed on departure. A proportion of the profits of his labour, should, by agreement, be secured to them, and faithfully accounted for.

3d. With proper internal improvements, I prefer retaining the Penitentiary System. In principle, it is sound and correct. The chief improvements wanting, appear to me to be, the enforcing a more close

and regular attendance to religious duties. In no other way can the obduracy of these people's hearts be affected. In the recent instance of the Newgate prisoners, we have seen what may be effected by the perseverance of an enlightened individual. Strict solitary confinement, should be the chief punishment—no other solace than religious books, should be allowed on such occasions.

4th and 5th. Being opposed to the abandonment of the Penitentiary System, I have little to offer on the subject of a substitute. I may however, be allowed to dissent from the increase of capital punishments. Whether it is lawful for man, in any case, except that of immediate self-defence, to deprive another of his life, is a subject of high importance, into which it is needless, at present, to enter. But in every modern code of criminal law, it seems to be admitted, that capital punishments should be as few as possible.

6th. If transportation for life were practicable, it would, perhaps, be the most certain mode of relieving the community from the burthen of its guilty members. But I know not how it could be effected. The consent of the inhabitants of the country, must be obtained, or they would be refused admission; or, if not destroyed after landing, returned upon our hands.

Land them on an island in the south sea; if they should overpower the peaceable inhabitants, what a series of crimes would probably ensue; and how could we justify ourselves for being the cause of it?

As to the "*chains*," if by this is meant that the convict should be employed in the public, or exposed labour in the streets, highway, &c. as was once attempted in Philadelphia, and seems by Howard's great work, to have been practised in some of the European cities, I cannot too strongly express my disapprobation of it.

With us, refractory conduct, daring, and often, obscene language, useless labor, or rather, the mere semblance of labor, and frequent escapes, soon induce us to relinquish the plan.

If the chain should be tried again, the criminals should be kept together, secluded from the public, and debarred from all extraneous communication in, going to, or returning from, their daily tasks. That reformation which is always a leading object, and which was never attained by the public exposure, might possibly be thus effected.

This concise view will, I hope, be as acceptable as a diffuse and ela-

borate answer. I will, at any rate, evince my full concurrence in the great object of your present consideration.

I have the honor to be,

Gentlemen,

Your most obedient servant,

W. RAWLE.

Messrs. C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES,

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ROBERTS VAUX, *Esq. to the Committee.*

PHILADELPHIA, 11 Mo. 14, 1820.

RESPECTED FRIENDS,

It afforded me great satisfaction to learn by your circular letter of September last, that you were endeavouring to collect information concerning the effects of the *Penitentiary System* in the United States. A more important inquiry has scarcely, if ever, been instituted in our country, and I sincerely desire that the mode you have adopted, may be the means of yielding for you, the lights of experience, and the suggestions of wisdom.

Without pretending to be qualified for the administration of either of those valuable assistants to your labours, I take the freedom to submit a few thoughts.

My reflection upon this subject has induced me to believe, that the Penitentiary System has never been *fully*, and *fairly*, adopted in any state of the union, since that System consists, if I have correct ideas of it, in the application of the following principles.

1st. That convicts undergoing its wholesome discipline, should be rigidly confined to solitary life, and employment.

2d. That punishment should be adapted with great accuracy to the nature of the offence, preferring to err on the side of clemency.

3d. *That no redemption from the penalty should ever be allowed.*

4th. That instead of calculating what labour the prisoner can perform to maintain himself during his confinement, let the attention of those who have the care of him, be devoted to the great purpose of reforming his mind.



5th. That men of integrity, and honor, be appointed to the office of Inspectors of Prisons, with ample powers, to continue in office for a term not less than five years.

As these principles have not been applied in Pennsylvania, it cannot be said, as some persons contend, that the *system* has failed to answer the ends of its institution.

Imperfectly, however, as the experiment has been here made, great benefits have resulted from it; crimes have certainly lessened in number, and atrocity, and they will continue to diminish in the same degree, as the aims of punishment are directed to reconcile the offender to society, rather than by *social life in jails, to educate prisoners in villainy, and by degrading, and vindictive treatment when in prison, establish opinions in their minds, that they are bound in honor, and in valour, to array themselves against the community, and its laws.*

*Capital punishment*, though of rare occurrence with us has generally had an injurious effect—the spectacle of a public execution has always been attended with numerous offences. If under any circumstances, life must be taken, let the sufferer pay the forfeit within the prison walls, obscured from public observation.

*Transportation*, seems to be an expedient rather premature for this youthful nation; it would be difficult to procure a suitable place abroad for locating prisoners.

In short, *solitary confinement* appears to be the only rational, and efficient mode of punishment—its beneficial influence was strikingly illustrated in the prison of this city, some years ago. A young offender was committed to a cell, and left to his own reflections. Unknown to the keeper, he had a pencil in his possession, with which he wrote, and drew upon the wall. He commenced with exhibiting indecent objects, and recording scraps of lewd songs; this occupied him as long as his imagination supplied him with impure pictures, or his memory furnished obscene verse; he was now seen to record sentiments of virtuous import, and in process of time, as if he had become gradually, and deeply sensible of his own condition, he represented a ship driven by the fury of a storm, and perishing under its effects:—finally he drew a vessel gliding with easy sail into her desired haven, near which he placed these memorable words of the Redeemer:—“*Come unto me all ye that labour, and are heavy laden, and I will give you rest.*”

This individual was, in due time, released from confinement, reformed, and became a respectable character.

I remain,

Very respectfully,

Your friend,

ROBERTS VAUX.

To C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES.

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*From JAMES MEASE, Esq.*

PHILADELPHIA, Nov. 23, 1820.

SIR,

I had the pleasure to receive, three weeks since, the circular of the New-York Committee, on the subject of the Penitentiary System. Having given my ideas with respect to it, and as to what ought to be done, to render it more effectual, and to free us from the rogues, who show, by repeated commission of crimes, that they are not to be reformed, I have nothing to add. What I have written, was the result of much and careful inquiry, and I will venture to say, that all the information collected by you, will only tend to substantiate my facts, and show the propriety of the plan I have recommended. My papers are contained in the 5th, 6th, 7th, and 8th numbers of the National Gazette, and were forwarded, shortly after their publication, to Thomas Eddy, and I beg leave to refer you to them. I had prepared a 5th paper, in which I pointed out the island of Tristanda Cunha, as the most suitable place to transport felons to, but it was not published.

Wishing you all success in your important labours,

I remain, Sir,

Respectfully your fellow-citizen,

JAMES MEASE.

C. D. COLDEN, Esq. *Chairman of the*

*New-York Penitentiary Committee.*

*From the same.*

PHILADELPHIA, Jan. 15, 1821.

SIR,

Some weeks since I had the pleasure to refer you to my papers on the Penitentiary System of Pennsylvania, contained in the National Gazette, of this city, by way of answer to your Circular, requesting information on that subject. I presume Mr. Thomas Eddy, to whom they were sent shortly after publication, has communicated them to you. They have recently been re-published in the Union Gazette, of Philadelphia, more at large, and a number was added, containing an account of the place to which I would have all those criminals sent, for whose crimes I deem transportation essential. This number I now enclose. I fear an expression contained in my former letter, will be construed as implying a belief, on my part, that I have exhausted the subject, and the inutility of the trouble which yourself and colleagues have undertaken. I beg you to be assured that these are not my sentiments : but I cannot, nevertheless, refrain from saying, that I feel confident of my having fallen upon the only plan that can with certainty and economy be adopted, to relieve society from the prevalent accumulation of crimes, and to prevent them among the rising generation. They are rigid solitary confinement, without work ; cessation of pardons, except in particular cases specified ; transportation for all second offences, and for certain first crimes ; and the diffusion of education among the poorer classes of society. This last provision applies with great force to Pennsylvania. A new law for that object is now before our legislature.

I understand that the project of building a new prison over the marble quarries, or inclosing them within the walls, is now carrying into effect, on York Island. If the expectations are, that the prisoners will be enclosed to repay for the expense of maintenance by their labour ; that they will be reformed ; or deterred from the commission of future crimes, when released from confinement, I do not hesitate to say, and to predict, that disappointment on all those points will be experienced. Your present establishment is infinitely more expensive than that of Philadelphia ; and the new plan will be much more costly, and productive of no good, except accommodating the numerous villains with which it will be filled, and do away the necessity of pardoning old convicts to make room for new inmates. My plan of soli-



tary confinement and transportation, after a few examples had been made, would terrify the wicked into good behaviour. A continuation of the system of obliging criminals to work and sleep in society, will inevitably cause the increase of crimes, and the perpetration of the evils we at present deplore. The sooner it is abolished the better.

Accept my sincere respect.

JAMES MEASE.

C. D. COLDEN, Esq. Mayor of New-York,  
Chairman of the Penitentiary Committee.



# CONNECTICUT.

*Letter from his Excellency Governor WOLCOTT.*

LITCHFIELD, Conn. Jan. 11, 1821.

SIR,

I have to acknowledge your letter of September last, requesting information respecting *the results of the Penitentiary System in this State.*

I now transmit a copy of a letter from Martin Sheldon, Esq. with a summary statement of the regulations and bye-laws of the New-Gate Prison. Although I immediately attended to your request, it was only a short time since, that I received the last of the documents required, which will account for the delay of my reply.

The ancient punishments of those crimes, for which imprisonment in New-Gate is now substituted, were, death, cropping the ears, branding on the forehead, whipping, or the pillory. This prison is either the oldest, or one of the oldest establishments of the kind, in this country. The situation is secluded, at a distance from our principal roads and villages. The annual expenses are now about eleven thousand dollars.

It is believed by many, who are probably the best judges, that the expenses might be reduced, by enclosing a greater space of ground, and increasing the number of workshops and variety of labour performed by the prisoners.

Females are rarely convicted of crimes in this State, and are never sentenced to New-Gate, but are confined separately in the county work-houses.

The power of pardoning offences, is, by our constitution, exclusive-

ly vested in the General Assembly. It is very rarely exercised, and never, except upon proof of the good conduct of the convict, during his confinement.

The prison is very secure. Its solitude, the appearance of the caverns, and the arrangements for exacting the prescribed labour, are appalling to beholders. It is probably a defect, that, for want of more room, the means of discrimination between convicts of different degrees of enormity, do not sufficiently exist. But, notwithstanding these circumstances, the situation is healthy and deaths are not supposed to occur more frequently, than among comparative numbers of the inhabitants of the neighbouring towns and villages.

Public opinion, in this State, would not support an establishment, which was supposed to be inhuman, or unnecessarily rigorous. The people are, however, economical, and are not willing that rogues should become dangerous to society, or inconveniently burdensome to honest men.

I have no doubt, that the institution of New-Gate has been salutary; and, as far as my knowledge extends, no wish exists among the people, that recourse should be had to the ancient modes of punishment.

I am also satisfied that the Penitentiary System ought not to be abandoned in the United States; and especially that exile or banishment ought not to be substituted. It is manifestly immoral and unjust for any State to expel their profligate or degraded population upon another community.

The unpopularity of the Penitentiary System, in several sections of this country, has probably been chiefly occasioned by the constantly increasing number of convicts, and by the enormous expenses of these establishments, much of which, in my opinion, have been wholly unnecessary and worse than useless.

The scale of human enjoyments rises from that degree of rest and sustenance, which is barely sufficient to support life, to that which affords the means of the highest innocent gratifications, both physical and mental; and in the efforts of men to elevate their condition. In this scale are to be found. (independent of religious sentiments, which originate in a higher source,) the excitements to all human improvements, including all the motives which stimulate industry, and the causes of every attainment in civilization and moral excellence.

Even the conduct of depraved men is influenced by a misdirected

desire of happiness, but their reason being perverted, they seek to obtain good by selfish indulgencies, and the gratification of unbridled passions. It is the object of penitentiary establishments, to protect society against injuries, to restrain the unprincipled, by the fear of losing the enjoyments which they possess, and to convince offenders, by actual deprivations, that "*the way of the transgressor is hard.*"

In my opinion, these principles have not been sufficiently regarded, in many of our establishments. The buildings which have hitherto been most commonly erected, have been costly and magnificent structures, more resembling palaces, than places adapted to the punishment of crimes; and the appearance of the interior management has been rather inviting than repulsive. Frequently, if not commonly, the convicts have been fed and clothed in a manner superior to what many, perhaps most of them, were accustomed to enjoy before their imprisonment, and superior to what great numbers of the virtuous poor are able to acquire by their utmost exertions. The sense of shame has been extinguished, or levelled, by the indiscriminate treatment of men of different temperaments, and by the accumulation of too great numbers exposed to constant intercourse. Besides, contrary to a policy equally wise and humane, the condition of the convicts has been presented to the imagination of spectators, as far more tolerable than the truth would warrant, whereas an impression directly the reverse ought to prevail.

The propensities and habits which dispose men to the commission of crimes, are, violent passions, intemperance, and dishonesty. Convicts are commonly men of vigorous health, middle age, and frequently, they are neither deficient in intelligence nor education. When the productive value of barbarous and unskillful African slaves is considered, and that this value is derived from their involuntary labour, much of which could be more advantageously performed by horses and oxen, it is apparent, that such expenses as are now incurred for the support of convicts, are chiefly owing to defective managements.

While I am satisfied, that the lives, property and tranquility of peaceable and honest men ought to be absolutely protected, I am no advocate for cruel punishments. On the contrary, I believe that criminals have rights, which ought to be conscientiously respected;—that nothing will justify governments in depriving men of life, but the preservation of the public peace; and that arbitrary restraints, pain and wretchedness, are both unjustifiable and unnecessary.



Penitentiaries ought, in my opinion, to be erected in healthy, but secluded situations. A high wall, which could not be undermined, with a railing, protected by an armed guard, and with interior palisades, and double gates of cast iron, would afford the requisite security. Within the palisades, a number of work-houses ought to be erected, proportioned to the numbers of convicts expected to be confined in one establishment. These work-houses ought to be so contrived as to confine the prisoners in separate classes, according to their different tempers and habits, and no intercourse ought to be allowed between the different classes.

As a general rule, the kind of labour required, ought to be that of which the value can be easily determined by quantity or measurement, or what is called task-work.

Convicts, on arriving at a penitentiary, ought to be convinced, that they cannot escape by their own exertions, and that, except an allowance of bread and water sufficient to sustain life, without abridging its duration, all their comforts will, in health, depend on the productive value of their labour, and on their peaceable and regular deportment : but I think that no person ought to be divested of the hope of enlargement, by a sentence of imprisonment during life, especially for a first or second offence.

The arrangements for exacting the labours required, ought to be such as would allow it to be performed with convenience and advantage ; but the supplies of subsistence, clothing, and materials of every kind, ought to be furnished by a public contract, with such suitable person, as would give security to receive the avails on the best terms.

I am satisfied that regulations founded on these principles, would, in a short time, reduce the public charges to the expenditures required for the support of buildings, an armed guard, and perhaps tools and implements of labour, besides stated compensations for medical relief, religious instruction, and salaries to a board of inspectors, as a protection to the convicts against wanton cruelty and oppression.

I have the honor to be, very respectfully,

Your obedient servant.

OLIVER WOLCOTT.

The hon. CADWALLADER D. COLDEN.

From MARTIN SHELDON, Esq. to Governor Wolcott.

GRANBY, Nov. 27, 1822.

SIR,

In obedience to the request of your Excellency, communicated us by letter of the 25th September last, relating to New-Gate prison we have endeavoured to collect such information upon the several heads contained in that letter, as, we hope, will meet the wishes of your Excellency, and answer the object in view. We regret, that by reason of some unavoidable hindrances, our reply has been so long delayed.

About the year 1700, a company of miners, from Germany, opened the mines, called the *Copper Mines*, then belonging to Simsbury, now Granby. The excavation, made by raising copper ore, is about one hundred feet in length, varying in width from ten to fifty feet, and in height from five to fourteen feet. Toward the close of the Revolutionary war, about the year 1778, the state began to make use of this cavern for the confinement of convicts. By an act of the legislature, passed in May, 1790, "the cavern in the copper mines in Granby," was constituted and made a public gaol and work-house, by the name of New-Gate Prison. A sum of money (about seven hundred pounds) was granted, to defray the expenses of erecting the necessary buildings and wall. In December, 1790, the work was accomplished, and eight convicts received from the county gaols. Since that time, to the present, including those committed in December, 1790, the number of convicts annually committed is as follows, viz:—

In 1790 . . 8	In 1800 . . 11	In 1810 . . 25
1791 . . 11	1801 . . 11	1811 . . 18
1792 . . 6	1802 . . 17	1812 . . 18
1793 . . 11	1803 . . 14	1813 . . 9
1794 . . 12	1804 . . 12	1814 . . 19
1795 . . 12	1805 . . 15	1815 . . 16
1796 . . 2	1806 . . 19	1816 . . 23
1797 . . 6	1807 . . 14	1817 . . 32
1798 . . 10	1808 . . 17	1818 . . 24
1799 . . 6	1809 . . 21	1819 . . 21
		1820 . . 31

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Total, 471

The whole number in prison, at various given times, from 1810 to

1820, has been from 45 to 77. The crimes which they have been convicted, were generally, burglary, horse-stealing, arson, counterfeiting, and passing counterfeit money, attempts to commit rape, forgery, and, in a few instances, high crimes and misdemeanors. The time of confinement has been, for the first offence, generally from eighteen months to three years, and, upon a second conviction, double the time. In few instances, not exceeding one to each year, since the institution of New-Gate, have there been sentences for life.

By a late statute, the overseers of the prison are authorised, at the expiration of the time for which the prisoner is sentenced for confinement and labour, to take his note, with the best security he is able to procure, for the payment of the costs of the prosecution, and discharge him.

The effect of imprisonment on morals and manners, as far as has come within the knowledge of the overseers, has been good. In several instances, those who have suffered the punishment of New-Gate imprisonment, for their crimes, have turned to a better course of life, and by their regular conduct and conversation, have evinced a reformation, and become industrious and useful citizens.

Respecting the mode of treatment, the prisoners are put to labour, in the day time, the usual hours of other labourers. Their employment, until 1817, was confined principally, to manufacturing wrought nails. Since that time, various other employments have been introduced, such as smith-work, boot and shoe-making, coopering, waggon and plough-making, basket-making, and other light work. Their winter clothing consists of home-made woollen cloth. In summer, they wear frocks and pantaloons of tow cloth. They sleep in straw bunks, with woollen blankets for covering. Their fare consists of daily rations; each ration consisting of one pound of good beef, or three quarters of a pound of pork, one pound of rye flour, two and an half pounds potatoes, or three gills of peas or beans, and one pint of cider.

The prisoners are secured by a guard—some of the more daring and hardened are lightly shackled with small chains.

As to the government of New-Gate prison, three overseers are annually appointed by the legislature. The overseers annually appoint the master or keeper of the prison, who annually enlists his guard, which now consists of one sergeant, two corporals and 17 privates.

The keeper is allowed a salary of 550 dollars annually. The wa-



ges of the guard, by ~~the~~ <sup>the</sup> allowance, are, per month, for the sergeant, \$12 67; for the corporals, \$11 33; and for the privates, \$10 each, together with rations. In addition to which, the guard also receive a suit of clothes annually, consisting of a coat, vest, and pantaloons, of home-made woollen cloth, and two dollars each, in lieu of summer clothing.

The government of the prison is further regulated by a code of rules and bye-laws, made by the overseers, in pursuance of the 6th and 7th sections of the statutes passed in May and October, 1790.

I am respectfully,

Your obedient servant.

MARTIN SHELTON,

*One of the Overseers of New-Gate Prison.*

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*Summary of the Regulations and Bye-Laws for the government of New-Gate Prison, revised by the Overseers, A. D. 1819.*

The prisoners are to be taken from their lodging rooms, each day, (Sundays and public days excepted,) at sun-rise, and to be kept at labour through the day, at such business as the overseers and keeper direct, and at the close of the day, be returned to their rooms. They shall be required to perform a reasonable day's labour, in that branch of business of which they have acquired a competent knowledge, unless prevented by sickness or infirmity.

Any prisoner who shall fail or refuse to perform the labour required of him, in a workmanlike manner, or shall disobey any orders, shall be punished, by a reduction of his allowance of provisions, by whipping, not exceeding ten stripes for one offence, or by constant confinement, in the caverns, until he perform the duty required of him.

The keeper is empowered to put shackles on any prisoner, if he deem it necessary for the safe-keeping of the prisoner, or the safety of the prison.

Any prisoner who shall cut his irons—or who shall make, conceal, or keep with his person any instrument to be used for that purpose, or for the purpose of breaking the prison—or who shall injure the prison or work-shops, in attempting his escape—or shall keep or conceal any instrument with which he may injure any other prisoner or person—or shall insult or abuse the keeper, officers or guard—or shall quarrel with any other prisoner—or be guilty of stealing—or shall speak to

or converse by writing, with strangers, or with his friends, without permission from the keeper, shall be punished as before mentioned.

The keeper, at his discretion, may furnish the prisoners, who are the most diligent, faithful and obedient, with ardent spirits occasionally, and with a sufficient allowance of the best provisions in his possession.

The guard are prohibited from inflicting any punishment on a prisoner, without the direction of the keeper—and, by proper relieves, are to keep watch over the prison, by day and by night.

Strangers who visit the prison, are prohibited from having any conversation with them, or trade or traffic with them, or making any present to them, without the permission of the keeper.

The keeper may, at his discretion, permit or refuse permission, to strangers, to examine the caverns.

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*From the Honorable JAMES GOULD, to the Committee.*

LITCHFIELD, Oct. 10, 1820.

GENTLEMEN,

I feel myself bound to apologize for my delay, in replying to the inquiries, which I have lately had the honour of receiving from you, in relation to "the results and tendency of the Penitentiary System." This delay has been occasioned by your circular's having arrived during my absence, for several weeks, from home, and of constant and urgent engagements since my return.

Upon a subject so deeply interesting to the world, as that to which your inquiries relate, I greatly regret the necessity I am under, of acknowledging, that I am almost entirely uninformed. It is, eminently, one of those subjects, upon which the only safe rule of judging is to be deduced, principally, at least, from the details of *experimental* information, of which, I am sorry to say, I have none : and, as a matter of speculative investigation, it has lain very much out of the range of my inquiries.

With this avowal, it would, perhaps, be most proper for me to close. I take the liberty, however, to add, that from the few and partial practical results, with which I have occasionally been made acquainted, by report, I have been led very strongly to *doubt*, whether the Penitentiary System will be found adapted to the ends proposed to be attained by it. So far as my limited means of information have led me

to form any judgment at all, upon the general question, my prevailing apprehension, I am constrained to acknowledge, has been, that the system must ultimately fail, for want of sufficient *penal terrors*, in its sanctions. I have been in the habit of believing, that the most efficacious mode of preventing or checking, crimes—if not the only one of any extensive efficacy—is, to *deter* men from the commission of them. And, though the moral *certainty* of punishment, as a consequence of conviction, is, undoubtedly, essential to this end; yet this certainty *alone*—abstracted from the *nature and degree* of the punishment prescribed—will not, I suspect, be found sufficient. Penal laws, to be effectual, must be addressed, and addressed powerfully, to the *fears* of men. For, as temptations to the commission of crimes are strong, it would seem, that the checks intended to restrain them, should be proportionably so. In this particular, I fear, the Penitentiary System will be found radically defective.

It is, confessedly, most desirable, that the sanctions of criminal law should be made to operate, (so far as a paramount necessity may not forbid it,) as the means of *reforming* offenders. Whether such a system may be practicable, or not, is to be ultimately ascertained, I am aware, by the results of *experiment*, if at all. And whether the experiment has, or has not, been fully and fairly made, already, I am ill-qualified to judge. I am very apprehensive, however, that it never can be rendered successful, to any considerable extent. Among convicts, the average *number* of subjects, upon whom the ordinary and proper motives to reformation, would be likely to exert any salutary and permanent influence, will always, I suspect, be, comparatively, *very small*: and, unless those who would be most open to the influence of such motives, could be distinguished, with certainty, beforehand, from their more incorrigible fellow-convicts, and effectually separated from them; that number would, in all probability, be constantly diminishing. Within my own very limited experience, I have not known an instance, in which it could be said, with certainty, or with reasonable confidence, that reformation had been produced, by any punishment, severe or mild. And the impediments to success, in such a plan for reforming offenders, are, in my view, so numerous and so formidable, that I entertain but little hope of its proving effectual. Even if the scheme should prove successful, in a greater proportion of individual cases, than, I believe, can be rationally expected; still, the very means, by which alone any *genuine and lasting* re-



formation must be effected, if effected at all, would tend, (if not directly to encourage the commission of crimes in *others*,) at least to diminish, in a dangerous degree, their *fears of the consequences* of transgression. Indeed, however revolting to a humane mind, the conclusion may and must be, I am constrained to say, that the present Penitentiary System, in our country, must, I fear, at no distant period, be abandoned, and a severer criminal code adopted in its place.

These suggestions, being almost exclusively theoretical, and very general, might, perhaps, have more properly been spared. But I did not know that I could better manifest my respect for the Committee, or my desire to comply, so far as I might be able, with their request, than by communicating my general impressions on the subject, however vague and crude they might be. If they should be found, as perhaps they may be, wholly incorrect, I should, for humanity's sake, sincerely rejoice in abandoning them myself, and in seeing them rejected, in the penal codes of all nations.

If a more rigorous criminal code should be found necessary, the question—What shall that code be, and what sanctions shall be prescribed?—would open a field of inquiry, which I feel myself not qualified to enter, and require a course of detail, which my limited acquaintance with the subject would not enable me to pursue. This consideration must also be my apology for not attempting to answer, specifically, your more particular inquiries.

I am, Gentlemen,  
with the greatest esteem,  
Your obedient servant,

JAMES GOULD.

Messrs. C. D. COLDEN,  
P. A. JAY,  
J. MILNOR,  
T. EDDY,  
C. G. HAINES.

## MARYLAND.

*Letter from DANIEL RAYMOND, Esq. Counsellor at Law, to the Committee.*

BALTIMORE, Jan. 13, 1821.

GENTLEMEN,

I had the honor to receive, a few days since, a circular from you, informing me, that you "had been appointed a Committee to prepare a general Report on the results and tendency of the Penitentiary System," and requesting, from me, an answer to certain inquiries contained in your circular.

I duly appreciate the honour you have conferred upon me, and only regret my inability to assist you in your labours upon this interesting and important subject. But, although my observations, and reflections, can be of very little service to you, in your inquiries, still, as they have been requested, I shall not decline giving them.

As I have never investigated the subject with a view to form a regular treatise upon it, my observations will, I fear, be crude; but as I am addressing gentlemen who are in no danger of being improperly influenced by my immature reflections; and who will, at the same time, duly appreciate my motives, and make every allowance for my want of experience and opportunity, whatever may be the demerit of my production, I shall freely give you the result of my reflections and observations upon the different points proposed for consideration, knowing that you cannot expect me to throw much light upon a subject, which has baffled the efforts of the most powerful minds.

I will here premise, that I have only that general knowledge of the Penitentiary System which is to be derived from our statute books—from occasionally attending courts of criminal jurisdiction, and the general accounts of the system, sometimes given in our public journals. It will not, therefore, be in my power, to give you any minute detail of facts, and, as my experience does not extend to a period anterior to the establishment of the System, I cannot speak of its advantages, in comparison with the system of punishment which prevailed prior to its establishment.

As to the second inquiry, I would observe, that the *ends*, or object of the Penitentiary System of punishment, I understand to be, the prevention of crimes, and the reformation of criminals. One, or both of these, is the object of every penal code. Besides these, there was, perhaps, a

desire to ameliorate the severity of the existing laws, and to lessen the expense of the state ; but these objects must always be subordinate to the main objects of prevention and reformation, and therefore, can never be pursued in derogation of the main objects. There can, I believe, be little doubt but that the Penitentiary System has utterly failed, both, to prevent crimes and to reform criminals. Of this, every Penitentiary in the country affords lamentable proof.

To what then, is this failure to be attributed ? This is a much more difficult question to answer ; and in order to answer it satisfactorily, it will be necessary to investigate some of the principles of human nature. —The character of the different classes of the community ;—the motives of human action ;—and the nature and effect of different punishments upon different characters.

Men are rational beings, and their universal pursuit is happiness. This may be laid down as a universal principle, equally applicable to every class of mankind. Men have different capacities and different ideas of what will contribute to their happiness ; but it is as true of the petty felon, as of the commander of an army, or the ruler of an empire, that he never chooses, what in his estimation is a lesser, in preference to a greater good. Different men, will act differently in the same circumstances, from their different motives of what will contribute to their happiness, but none of them ever act deliberately, upon the principle of choosing what, in their estimation, is a lesser, in preference to a greater good. The martyr who is burnt at the stake, considers the utmost extremity of corporal suffering, a lesser evil, than a dereliction of principle ; and the petty felon, who robs a hen-roost, acts upon that universal principle of human nature, of choosing what, according to his notions and feelings, is the greater, instead of the lesser good.

This principle is entirely distinct from, and perfectly consistent with, man's moral obligation, and his accountability for crimes ; for, although the desire, and the pursuit of happiness, is universal, yet the motives which actuate different men in the pursuit of it, are as different as the moral characters of men, and as widely diversified as those sublime principles and feelings, which govern the conduct of the martyr, and those base ones which actuate the pick-pocket, and the swindler ; and it is upon the motives of men in the pursuit of happiness, that penal laws are designed to operate.



It is notorious that men never commit crimes when they know those are watching, who will detect, apprehend, and punish them. This single fact shows, that by a perfect system of government, men may be prevented from committing crimes against society, and it also shows, that this perfect system of government consists in the certainty of detection and punishment.

I assume it then, as a general principle, that men would not violate the law, if they knew to a certainty that immediate detection and punishment would follow. To this general principle, I admit there are some exceptions. A man in a violent gust of passion may commit homicide, although he may be certain that his own life will be the immediate forfeiture; and there may be other passions, equally violent and uncontrolable; but these are exceptions to the general rule, and should not therefore be made the basis of a code of penal laws.

If, then, certainty of detection and punishment is a sure prevention of crimes, this principle should be made the basis of a penal code, and the great object should be to carry this principle to the greatest possible degree of perfection; and in proportion as it approximates to perfection, in this respect, in the same proportion will it restrain the commission of crimes.—There must not only be certainty of detection, but certainty of punishment also, which, under the present system, is far from being the case with a large portion of those whom the law professes to punish. In affixing a penalty to different crimes, regard should be had to the characters of the different classes of society, who are likely to be most affected by them; and to the different kinds of punishment which may be inflicted with the fairest prospect of producing the desired effect. One great defect of the present Penitentiary System, consists in the indiscriminate application of the same punishment to all classes of persons, which, from the great diversity of character, causes, in reality, very great inequality in the punishment. That which is the severest punishment to one man, may be none at all to another, and that which we call punishment, is often, in point of fact, either none at all, or very trifling, which is, in reality the case with a large proportion of the tenants of our Penitentiaries. Our Penitentiaries are, in fact, instead of being places of punishment, mere workshops and schools of vice, where those who long inhabit them, not only lose all sense of moral obligation, and all those habits, without which, no man can be supposed capable of procuring an honest livelihood, but also, where they become

adepts in every species of vice and crime. A Penitentiary will never answer the objects of its establishment, until it is made a place of real punishment to those who are sentenced to confinement in it, and it is but a mockery of justice, to shut up those criminals in Penitentiaries, to whom they have no terrors, and who, in reality, enjoy as much happiness while undergoing this pretended punishment, as they are accustomed to enjoy when at large in the world. In my opinion, there is nothing in which the Penitentiary System is more defective, than in the injudicious application of punishment. I am aware that the laws must be equal, and apply to all classes of society, and that no discretionary power can be lodged with the court, or with any other tribunal to apply different punishments, according to the different characters of the delinquents. All persons, who shall be guilty of the same crimes, must be subjected to the same punishment; still this will not prevent a much more appropriate and judicious application of punishment, than is at present inflicted.

Certain crimes generally prevail among certain classes of society, and the punishment of those crimes may be made applicable to those particular classes of people, among whom, the crimes are most prevalent, and who will be most sensibly affected by the punishment.

The great object of punishment, although not the ostensible one, is to deter others from committing similar offences. Different classes of society are to be operated upon, and deterred from violating the law, by those kinds of punishments, which they most dread; and although it is to be hoped, that there is a large portion of every community, whose sense of religious and moral duty, is sufficiently strong to prevent them from violating any known law, even though there should be no penalty or disgrace attached to the violation, and for whom, therefore, the terrors of a penal code, are entirely unnecessary, yet, unfortunately, there is a very large class in every community, whose sense of moral and religious duty is not sufficiently strong to prevent them from the commission of crimes independently of the fear of punishment and disgrace. This class, it is to be feared, is much more numerous than charity would lead us to suppose, and is to be found in every rank and grade in life. A large portion, however, who have not a sufficient sense of moral duty to restrain them from the commission of crimes against society, have nevertheless, sufficient regard to character, to restrain them, independently of the fear of actual punishment. To this class, disgrace is a severer

punishment than the actual suffering from confinement in a Penitentiary. There is no doubt many a man who has not moral principle enough to restrain him from the commission of crimes, who would sooner suffer five years confinement in a Penitentiary, provided it could be endured in perfect secrecy, than have his name published in a newspaper, as having been guilty of the crime for which he was to suffer. Men of this description are seldom guilty of the more mean and petty offences—they seldom pilfer and steal. There are grades of crimes as well as grades of men, and one grade of men will not ordinarily be guilty of those crimes most common among a grade of people whom they consider beneath them. This regard to character, should be fostered, and made a medium of punishment, by the government; and a very effectual method of punishing men in the higher grades of society, is by making their crimes as public as possible. The lowest class of society is almost entirely insensible to disgrace, and to them a Penitentiary is no farther a terror, than as it inflicts actual suffering. To people of this description, confinement in our Penitentiaries is, in fact, little or no punishment, and these are the people who commit the greatest number of crimes, if not crimes the most aggravated in their nature, and it is by persons of this description, that our Penitentiaries are most tenanted. There is no method of punishing people who are insensible to the loss of character, but by the infliction of corporal suffering. Those who propose to punish them by confinement in a Penitentiary, evince great ignorance of human nature. They enjoy, during their confinement, all the necessities of life, and ordinarily as great, or even a greater share of the comforts also, than they have been accustomed to, and probably even a greater share, than they would be capable of procuring for themselves, if at liberty; and it is a notorious fact, that many of them would as soon be in the Penitentiary as out of it, and it is by no means an unusual thing for those who have been discharged from a Penitentiary, to commit a crime for the express purpose of being sent there again. It is but a mockery of justice to pretend to punish such people by confinement in a Penitentiary.

Our Penal Codes and Penitentiary Systems, throughout, exhibit the most lamentable disregard to all the principles of human nature; so much so, that a man thoroughly acquainted with those principles, would scarcely be able to infer from an examination of a Penitentiary, that it was designed for the punishment of criminals; certain it is, he



never would suspect that it was designed as a place of penitence and reformation. A legislator is but ill qualified for his responsible office, who is ignorant of the principles of man's nature, and he must faithfully discharge the duties of that office, when, in forming a penal code, he disregards those principles.

The human mind possesses wonderful elasticity and facility in accommodating itself to existing circumstances. If this was not the case, we should be much more wretched beings than we are. The walls of a Penitentiary do not change human nature, and a man will as soon accommodate himself to the deprivation of liberty, as to any other misfortune or calamity. How soon do the most sensitive of our species, recover from the calamitous dispensations of divine providence, as well as from the ordinary misfortunes of life ! We daily see persons suffering the most poignant and inconsolable affliction, for some sudden and irreparable calamity ; but the mind soon accommodates itself to this new state of things, and we see them in a few days, or a short time, recover their wonted cheerfulness and gaiety. The same principle applies to, and governs the subjects of legal punishment, and a person, who, on being sentenced to a Penitentiary, may endure the most excruciating mental suffering, in the course of a very short period, becomes accustomed to this new condition—the mind recovers its wonted tone, and the Penitentiary is, in reality, no longer a place of punishment ; and I very little doubt, but that the convicts of a Penitentiary enjoy, ordinarily, as great a share of happiness, after having been there long enough for the mind to accommodate itself to this new state of things, as they were accustomed to enjoy, when at large ; so that the object of the Penitentiary, so far as it regards punishment, is almost entirely defeated by its injudicious regulation and management, and in other respects, as will presently be shown, much worse than defeated.

A Penitentiary System has a two fold object—punishment, and reformation.—The former object, is entirely defeated, whenever confinement in a Penitentiary, ceases, from whatever cause, to be a punishment ; so that, if a man is sentenced to the Penitentiary for ten years, and after remaining there three months, becomes so accustomed to it, as to enjoy an ordinary share of happiness, confinement for the remaining nine years and nine months, is, in reality, without any effect whatever, in accomplishing this object, and a mere mockery of punishment.

Experience also proves, that this confinement is wholly ineffectual in reforming the convict. What we call a Penitentiary, is, in fact, a *misnomer*, and our work-houses, thus denominated, ought never to have received such an appellation. Experience has abundantly proved, that penitence is never the result of confinement in our Penitentiaries, and I maintain, that according to the known laws of the human mind, it is impossible that they should work penitence and reformation, or, at any rate, that this cannot be their tendency, and if they ever have this effect, it is not their natural effect, but merely an exception to the general rule. I do not say that our Penitentiaries cannot be so improved as to be, in reality, what they purport to be : but if they are ever so improved, it will be done by adapting them to our nature, and by causing them to operate on the human mind in a different manner from what they now do. At present, they are mere work-houses, and according to my notions of human nature, a work-house and a Penitentiary, are altogether incompatible. The two are founded upon distinct principles, which are in opposition to each other ; or at any rate, so far in opposition, that they never can be reconciled, or made to unite.

Let us examine a little into some of the laws of the human mind, as we see them daily exhibited in the world, and let it be recollected, that these principles are not changed by confinement within the walls of a prison. Suppose a man is suffering under some mental dejection and oppression, I care not from what cause, whether it be some dispensation of providence, conviction of sin, or some worldly loss ; what remedy would any discreet man propose, as most likely to relieve him ? Employment, exclaims every man, as soon as the question is proposed. If you can get such a man into a work-shop, I care not how, and busily employed for twelve hours in a day at, I care not what, I venture to say, that in ninety-nine cases in a hundred, a complete cure will be effected, and the patient probably be made perfectly happy, or at least, as happy as from the constitution of their minds, they are capable of being. Mental suffering then, and laborious employment, are, if not entirely, at least to a very great extent, incompatible, and irreconcilable, and yet all our Penitentiary Systems, are predicated upon the compatibility of these two principles of human nature. The System proposes, as a principal object, mental suffering, penitence, and reformation, and attempts to accomplish this object by compelling the criminal to go immediately to hard labour, the best and most effectual method of preventing mental suffering, penitence, and reformation.

Our lawgivers seem to suppose, that labour is, in itself, a punishment, as if they were ignorant that labour is the common lot of man by the express sentence of God himself. I cannot, myself, well imagine a greater absurdity, than to think to punish a man by compelling him to labour.

The reason why a Penitentiary, upon the present plan, defeats the very object of a Penitentiary, is not less obvious, than the fact of its producing this effect. The human mind is not capable of attending to two things at the same time. Employment, in any mechanic or manual occupation whatever, engrosses the whole attention, and of course, drives away all other reflections, and a man employed in making a pair of shoes in a Penitentiary, very soon forgets that he is in a Penitentiary, and ordinarily, is no doubt quite as happy as he would be any where else in the same employment. When his day's work is done, he is fatigued it is true, but this is not an evil or a punishment, and even if it was, he is not more fatigued than the same labour would have made him any where else, nor more so than nine-tenths of the community, who have committed no offence, and probably not more so than it would have been necessary for him to be, had he committed no offence. In consequence of his fatigue, he eats heartily and sleeps soundly, the two greatest comforts and blessings an uneducated man can hope to enjoy in this world, of labour and toil.

One principal object of the Penitentiary System then, is defeated by the very means adopted for its accomplishment, and the only punishment, a criminal suffers for his offence against society, is the disgrace of being in the Penitentiary, (which he probably does not value a straw,) and the restraint upon his liberty, which, in a very short time he becomes accustomed to, and totally disregards. Such we know to be the case, in point of fact, from observation; and such I say we had reason to suppose would be the case, from the known laws of the human mind. This is, however, rather a defect than an evil in the present System; but there are positive evils, vastly more important than all these mere defects.

Man we know is a creature of habit. He has been called *a bundle of habits*. These habits are easily formed at all periods of his life, and when formed, they are not easily changed. The only difficulty in forming a habit, is the pre-existence of a habit inconsistent with the habit wished to be formed. We know, also, that the strongest minds



can with difficulty withstand the shock of sudden changes, and it has often been said that the human mind is much more liable to be disconcerted and thrown from its proper equipoise, by sudden good than by sudden bad fortune. A long habit of restraint, disqualifies a man to act without the restraint. Let these laws of the human mind be applied to the tenants of our Penitentiaries, and see what the consequences will be. A man has been confined in a Penitentiary five or ten years.—His will has, during that period, been in subjection to the will of another.—He has, during that period, necessarily formed habits suited to a Penitentiary, and entirely unsuited to the world, or to personal liberty, and these habits, as may well be supposed, have become strongly rooted. All at once, his restraints are thrown off.—He is set at liberty, and turned into the world to provide for himself. Instead of being subject to the will of another, as he has long been accustomed to be, he is left to his own will, to which he is not accustomed. Is it rational to expect a man to preserve a proper equilibrium of mind under such a shock? Can it be expected by any man who has any knowledge of the laws of the human mind, that a man, under such circumstances, however good his intentions may be, can go steadily to work and provide for himself? It matters not that he has lived in the world before, and once knew how to provide for himself by his own industry. Since, then, his mind has, according to the laws of nature, accommodated itself to a different state of things, he has formed new habits inconsistent with his present condition, and forgotten how to be free; and yet he is required to be free, and to conduct himself with the prudence and discretion of a free man—in other words, he is required to act in direct violation of every known law of the human mind. Is it not far more rational to expect, that such a man will immediately return to the paths of vice, and again become the tenant of a Penitentiary? Under such a state of things, is it surprising that crimes increase in proportion as our Penitentiaries empty out their tenants upon the community? Is it surprising that our Penitentiaries are so many mansions of vice and crime? We see this same principle operating throughout this part of the country, and producing the same effect in regard to manumitted slaves, and there is also the same mental blindness to the law of man's nature, which produces the effect. A man has a large number of healthy, industrious, moral slaves, of different ages, from twenty-one, to forty-five. On his death bed, he sets them

all free, with the most solemn exhortations to be industrious and moral, and receives from them the most solemn promises of obedience. He gives them his blessing, and dies. In the course of a short time, nine out of ten of these slaves, so industrious and moral before, become vagabonds, and one half of them perhaps, get into the Penitentiary, and all the neighborhood immediately and perpetually exclaim, "see the effects of manumission! The blacks are not capable of being free, and providing for themselves.—They are an inferior order of beings, and fit only to be slaves!" And this they will maintain in opposition to reason and authority, although they see a multitude of instances, of blacks, who have been born free, and educated with the expectation of being free, who make as industrious, sober, good citizens, as any in the country.

Although every man is sensible of the force of habit, from his own experience, yet we are all too apt to overlook it, or make no allowance for it in others; and our legislators, in forming our penal codes, seem never to have reflected that there was any such thing as habit; but to have considered man's will to be, under all circumstances, equally free to do right or wrong, and that no greater effort is required for a man, whose will has been in subjection to another for ten years, to go voluntarily to work and provide for himself, than if, during that period, he had been free and voluntarily industrious. But, in my humble judgment, it is as irrational to expect a man, who has been ten years confined in a Penitentiary to hard labour, at once to become voluntarily industrious, when free, as it would be to expect a savage of our western wilderness, at once to assume the manners and habits of an industrious citizen, merely on having the advantages of civilization described. From the foregoing observations, I deduce the following propositions.

1st. That a man thoroughly acquainted with human nature, but unacquainted with our Penitentiary Systems, never could infer from our Penitentiaries themselves, what their object was.

2d. That confinement in a Penitentiary, is no punishment at all, to at least one half of those who are put there for punishment.

3d. That confinement ordinarily ceases to be a punishment to all, before a tenth part of their time is expired.

4th. That a long confinement in a Penitentiary, utterly disqualifies a man for gaining an honest livelihood by his own voluntary industry;

and that, therefore, his only alternative, when turned out, is to steal or starve.

Admitting this to be the true state of the case, and that the evils of the present System are real, and not imaginary ; the next inquiry is, in what way can they be remedied. This is a much more difficult branch of the subject than that of pointing out the evils of an existing establishment. I shall, however, attempt to suggest improvements, relying upon your indulgence, should I not be successful.

I would, in the first place, suggest the propriety of altering the law respecting children and youth, so as never to inflict either a corporal or a disgraceful punishment upon such persons. Although from seven to fourteen, a child may, according to the common law, be *doli capax*, yet if they commit crimes, it is more the fault of those who have had their training than their own, and there can be little doubt, but that with proper instruction and government, they may be reformed. When a child or youth, under sixteen or eighteen, commits a crime, instead of inflicting that punishment provided for men, I would have them taken from their parents and placed under the care of some good master, who should instruct them, and teach them some mechanic art. Our temples of justice are too often profaned by arraigning children and youth, convicting and punishing them as men. In forming a Penal Code, the great object should be to adapt the punishment to the laws of the human mind in such a manner as to produce the desired effect, with the smallest quantity of suffering. We must not, however, from false notions of humanity, stop short of producing the desired effect ; for, in that case, the punishment inflicted becomes wanton cruelty. As far as practicable, a punishment should be provided to suit the character of every criminal. In a perfect system of punishment, the penalty would be applied to the personal character of the offender, and not to the offence or specific crime committed. In this way, infinite wisdom would punish guilt. But such a system can never be adopted by short-sighted man. Human laws must be general and equal, as it regards the specific crime, without respect to the character of the criminal. But although penal laws must regard the crime committed, without reference to the personal character of the offender ; still there remains great latitude to adapt the punishment to the character of the criminal, by observing the character of those who usually commit certain offences, and providing a punishment suited to



the character of that class of persons. We find, for instance, that persons who usually commit petty larceny, and the other minor and meaner offences, are totally insensible, or nearly so, to the loss of character, and are inaccessible by any other means than corporal punishment. For these offences, therefore, I would provide a punishment suited to the character of such persons, and if other characters committed these offences, they must take the consequences, and suffer the punishment. I would therefore rebuild the whipping-post and pillory, for these offences, or, what is the same thing, for this class of people. The punishment is then soon over, without expense or trouble to the state, and in a manner much more likely both to work reformation, and serve as a terror to others, than that of confining them in a penitentiary, which to such persons, is often neither a punishment nor a terror, but rather a school of vice. This corporal punishment would, besides, have the effect to stamp a character of meanness upon these offences, (the most numerous that are committed,) which would cause even villains to despise and disdain to commit them, for rogues have their laws of honour and notions of dignity. There is no occasion to inflict corporal punishment with a degree of shocking severity, which shall excite the commiseration of the beholders. To mangle a man's body with a lash is wanton cruelty—not wholesome punishment. Although I never saw the lash or the bastinado inflicted, yet from the accounts I have heard and read, I presume the bastinado never excites those feelings of disgust and horror, that a severe whipping does. Certain I am, however, that severe corporal punishment may be inflicted without mangling the body, but whether the lash is the most suitable instrument, I am not prepared to say. If these persons repeated their offences, and were found incorrigible, I would rank them among a higher grade of criminals, to be treated as hereafter described.

The next class of persons for whom I would provide punishment, are those, who, although they have not moral principle enough to restrain them from the commission of crimes, have, nevertheless, some regard to character, and are liable to disgrace. Such are violators of public trust, house-breakers, cheats, swindlers, counterfeits, horse-thieves, &c. &c. This class of criminals are usually from the higher orders of society, and seldom commit petty larceny, or any of the meaner crimes. These people have some regard to character, and are susceptible of punishment by disgrace, and it is not therefore necessary to rely alone on corporal punishment for them. They are

also capable of being brought to reflection and penitence. For them, therefore, I would provide a Penitentiary, in the true sense of the word—not a work-shop, but a real Penitentiary. In it the cheerful sound of the hammer of industry should never be heard. The tenants of it should remain in perfect idleness and solitude. They should see no human being but their keeper; unless, indeed, it might perhaps be well, occasionally to expose them to public view, for the purpose of humiliation. They should be clothed in the garments of humiliation and disgrace. They should wear chains, not only for their safety, but as a badge of their character. It would be well to keep them in darkness as much as possible; but I am told a man cannot endure total darkness more than about twenty days at a time, before he becomes deranged. As a principal object is, to operate upon their pride of character, I would have an official account of their conviction as widely circulated as possible, through the public papers. This should contain a description of their persons, their place of birth, and parentage. To many this would be a most terrible punishment—and, although it might wound the feelings of relations, yet this must be endured for the public good—and it is generally the fault of parents, in a great measure, that their children become criminals, and they therefore deserve to bear a part of the punishment. Confinement in this Penitentiary should never be long enough to destroy those habits which are necessary to enable a man to procure a livelihood by his own industry; nor long enough for him to acquire other habits incompatible with his freedom and voluntary industry. I would, therefore, never have a person confined in this Penitentiary more than six months, and in most cases not near so long. The principal object is disgrace and humiliation, and this is as effectually accomplished in a month as in a year. If this class of criminals repeated their crimes, and were found incorrigible, I would rank them among a still higher grade of criminals, to be treated as follows:

For the third grade of criminals, I would provide a perpetual work-house, somewhat upon the plan of our present Penitentiaries. I call it a perpetual work-house, because I would have none sentenced to it but for life. It is designed for incorrigible offenders, for whose reformation there is no hope, and whose characters render it dangerous to suffer them ever to be let loose again upon society. I would set them to work to prevent them from being a burden to the state, and as they are never again to be let loose upon society, it is of little un-

portance what habits they form, nor can there be any objection to their enjoying as much happiness as is consistent with their safety. There can be no object in punishing them with idleness and solitude. Into this perpetual work-house, I would in the first place, put all those incorrigible offenders, who had repeated their crimes after having been at the whipping post, or in the penitentiary. I would also put into it persons guilty of murder in the second degree, where that idle and ridiculous distinction exists—also, those guilty of arson, of rape, of man-stealing, of highway robbery, of perjury, and perhaps counterfeiters for the first offence. Indeed, all persons who have evinced that incorrigible depravity of heart, which renders them dangerous to society, should be sentenced to this perpetual work-house. To it I would sentence none but for life ; since to confine them there for a term of years and then turn them upon society, is to make them felons by a regular course of discipline. It might perhaps be well to make some provision for discharging them, upon condition that their friends would give adequate security that they should immediately depart the country, and never return. They should be required not merely to leave the state, but the country, for one state ought not to banish its felons to the other states.

The last grade of crimes should be capital : and whether this should include any but murder, I am in doubt. Much has been and may be said on both sides of the question ; but as the arguments are familiar to every one, it is unnecessary to repeat them. I am, however, decidedly of opinion, that murder should be punished with death.

Among other evils of the present system, is its enormous expense, and the system I have suggested, I conceive, would lessen that expense at least one half.

I have thus stated, very imperfectly I fear, some of my notions of the evils of our present Penitentiary Systems, and taken the liberty of suggesting some alterations which to me appear well calculated to improve them. I have not, probably, gone so much into detail as might be necessary for the public, but I am writing to gentlemen to whom a hint is as good as a volume.

I will also take the liberty of making a few general observations upon the present administration of the laws, which, in my opinion, has a very bad effect upon the community.

The great object to be attained in the administration of penal laws,



is certainty in the detection of criminals, and certainty in their punishment. The object of this certainty is not so much the vindictive punishment of the offender, (for that does not lessen the evil the community suffers from the crime which has been committed,) as the prevention of others from offending. Very few would commit crimes, if they knew to a certainty that they should be detected and punished. Every rational being, before he deliberately commits a crime, must necessarily make a calculation of the chances of escaping punishment; and therefore every criminal who escapes punishment, in whatever manner, or from whatever cause, affords additional encouragement to others to violate the laws; and where a large portion of those who commit crimes escape punishment, as is at present the case, the temptation and encouragement to commit crimes become very great, and it is not surprising that they annually increase.

There is at present a very great laxity and carelessness in our public officers, especially in the middle and southern states, so far as my observation has extended, in bringing criminals to justice; and there is a most deplorable disposition, I may almost say propensity, in the public, to permit criminals to escape punishment. This proceeds, in some measure, from false principles of humanity. Every man seems to say to himself—"true this man has committed a crime, and may deserve punishment; but punishing him will not remedy the injury; it is a pity to bring disgrace and suffering on the innocent friends of the unfortunate criminal, and it is besides an affair of the public, not of mine, and I am not therefore required to take any pains to bring him to punishment." It is almost invariably the case. I have witnessed it often, that if a criminal, at all respectable in his appearance, or if he has any friends who are respectable, is arraigned at the bar, the sympathies of the whole audience are immediately interested in his favour, and every one is ready and willing to do every thing in his power to secure him from punishment; and, if they are successful, no matter how manifest the guilt of the accused, they seem to exult in having rescued a victim from that inexorable tyrant the law. So powerful is this feeling, and so often successful in rescuing the guilty from punishment, that, according to my observation, the fact of a man's suffering a disgraceful punishment does not prove that he is more guilty than many others who are not punished, but only that he has fewer friends.

People who reason and act in this way, never reflect that every

criminal who escapes punishment, from whatever cause, affords example and encouragement to others to commit crimes, and that a principal object in punishing criminals is to deter others from offending.

Some of the facilities for escaping punishment might be easily remedied, and with this view I would deprive the Governor of the power of pardoning, and of granting a *nolle prosequi*. I consider this power to be attended with most mischievous consequences, and should be taken away entirely. In the first place, this must be a most unpleasant power for an honest and a humane man to exercise. In the next place, there can be no hope, in the present state of society, that it will ever be exercised with rigor or impartiality. Those who have strong friends will obtain a *nolle prosequi*, or a pardon, be their crimes small or great. Those who have not friends will never obtain either the one or the other. But these are by no means the worst consequences of this power. It is the anchor of hope to the accused and the convict; and there is very little likelihood of penitence or reformation, so long as there is hope of escaping punishment. A single spark of hope will support a mind, which, without it, would sink into contrition and repentance. It should, therefore, be a principal object to extinguish every ray of hope of escape, in the mind of the accused criminal, and of the convicted felon.

The powerful efforts that were made to rescue Hutton and Hull, the mail robbers and murderers, from punishment, is one among a thousand cases that might be cited to show the evil consequences of this power of pardoning. The effects of such efforts upon the community, even though unsuccessful, are most pernicious. There is nothing in my opinion, which has more influence in demoralizing society: it accustoms people to advocate and defend guilt, by getting their feelings enlisted on the side of the guilty. There were thousands of persons, of both sexes, insensibly led first to palliate and then to defend the guilty murderer, Hull, by having their feelings enlisted in his favour, with a hope of being instrumental in saving his life. There were thousands of persons, male and female, in Baltimore, Philadelphia, and I believe in New-York, who signed a memorial to the Governor to pardon him, and it was really shocking to a man, who reflected upon the consequences of these things, to see with what ingenuity and earnestness, respectable people, of both sexes, palliated and defended the crime of that monster, which ought never to have been mentioned

but with execration and horror. The same thing is constantly repeated in this state, although upon a smaller scale, with every criminal condemned either to the penitentiary or the gallows, who has any respectable friends. To prevent every thing of the kind, both upon a great and small scale, I would take away the power to pardon. If there must be such a power somewhere, leave it with the legislature: there would be very little danger that they would ever exercise it. There should also be as little discretion as possible left with the court in affixing the penalty to different offences. I have known a man to be sentenced to the penitentiary for ten years, for stealing a piece of calico not worth more than ten dollars, without any proof of his being an old offender; and I have known a man to be sentenced only ten years to the same penitentiary, who had committed a most atrocious murder. Such inequality ought not to be, and the improvements which I have suggested will necessarily leave very little discretion with the court.

A great deal of mischief has been done in this state and in Pennsylvania, and, for ought I know, in some of the other states, by attempting to improve the common law of homicide. The attempt to make two species of murder, when there is in the nature of things but one, and punishing the one with death and the other with imprisonment, has had the effect of reducing all or nearly all murders to the second grade, for it is seldom that a jury will, under any circumstances, find a man guilty of murder in the first degree. The common law of homicide is as perfect as the reason of man can make it, and the only rational distinction of felonious homicide is into murder and manslaughter, as the common law has established it. There are, however, some cases of constructive murder in England, which are rigorous and unjust. But this is the fault of other branches of their law and not of that relating to homicide. Where stealing a chicken is a capital offence, if a man in attempting to steal a chicken unintentionally kills a man, it is as perfectly consistent with the code of laws that he should be punished as a murderer, as it is that a man should be punished as a murderer, who in attempting to murder A, unintentionally kills B. Some of these cases of constructive murder in England, are rigorous and unjust; and some of our legislators have supposed that the common law of homicide required remedy, without ever reflecting that the law would be different in this country, without



any legislative interference, inasmuch as stealing is not a capital offence by our laws, and therefore homicide committed accidentally, in attempting to steal, would not be murder.

I have thus, gentlemen, stated, I fear more in detail than you will have patience to read, some of my notions on the main question proposed. My opinion on the other questions will be readily deduced from what I have said upon this. It will be highly gratifying to me, should I be so fortunate as to be successful in my feeble attempt to assist you in your arduous undertaking.

With a most sincere and hearty wish for a successful termination of your labours, upon this interesting and important subject,

I have the honor to be

Your most obedient, humble servant,

D. RAYMOND.

Messrs. C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES.

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*From the Honorable ROBERT GOODLOE HARPER.*

BALTIMORE, Oct. 20, 1820.

DEAR SIR,

I was in hopes of being able, before now, to make a communication to you, on the subject of the Penitentiary System, in answer to the circular letter, which I sometime ago received, from the Committee of which you are Chairman; but various interruptions have hitherto delayed the execution of my purpose. I have bestowed much reflection and attention on this interesting matter, both now and heretofore, and have recently made such enquiries as were in my power, for its further elucidation. As soon as possible, I will do myself the honour of communicating the result to you. In the mean time, I beg you to accept the assurance of those sentiments of respect, with which

I have the honor to be,

Dear Sir,

Your most obedient servant,

ROBERT G. HARPER.

CADWALLADER D. COLDEN, Esq.

## NEW-HAMPSHIRE.

*Letter from the Hon. WILLIAM PLUMER, late Governor of New-Hampshire.*

EPPING, (N. H.) Sept. 21, 1820.

SIR,

A few days since, I received a polite letter, signed by you and the other gentlemen who compose the Committee of the city of New-York, appointed to prepare "a general Report on the results and tendency of the PENITENTIARY SYSTEM." You suggest a number of enquiries for consideration, and request my opinion upon them.

The subject which has engaged your attention, is important; and the cause of humanity has a deep interest in the result. Crimes will be perpetrated, and offences committed, so long as man and society exist. It is, therefore, more important that good men and wise men, instead of wasteing their time in *lamenting* the follies and crimes of the vicious, and *wishing* their reformation, should adopt efficacious measures to suppress crimes and offences, by a course of punishment, at which humanity has no cause to revolt, and which ought to convince offenders themselves, that their own interest requires their reformation.

From my own knowledge of the effects of the Penitentiary System in New-Hampshire, and from information received from other states, I am fully convinced, that it has more effectually suppressed crimes than any mode of punishment previously established. I should, therefore, regret that the friends of Penitentiary establishments should abandon them, or that their enemies should induce the legislatures of the states to neglect them.

Our State Prison, or Penitentiary House, has been built and occupied more than eight years. Previous to its establishment, I had strong doubts of its utility, but experience has convinced me, that it is preferable to our former system. The punishments inflicted upon the offenders, are not only such as the people approve, but the offences are such as in their opinion, render the criminals *disgraceful*; which, in many instances, was not the case, when the culprit was confined, in a state of idleness, in the same gaol, though in a different room, with unfortunate debtors, or petty offenders. The circumstance of confining none but *criminals* in the same establishment, has a powerful tendency to impress upon the great mass of the people, the distinction between

crimes and petty offences—and to restrain them from committing the former. The culprits are now compelled, by hard labour, to make some amends to the society they injured. Their punishment is more certain, as escapes are much less frequent than under the former system. There are, also, better means of separating the young from the old hardened offenders, than in the county prisons. And considering the relief such establishments afford to the counties from the support of the offenders, I am persuaded, that, with prudent management, they will not materially increase the public expenditure. This fact appears substantiated, by the changes introduced into the establishment, in this state, in the course of the three last years. If Penitentiary establishments are not schools of reform, they will, at least for a period, secure the public against the depredations of those who are confined within their walls.

Previous to the establishment of the state prison, in 1812, there were in New-Hampshire, eight offences that, by law, subjected the offender to capital punishment; but in that year, they were reduced to two—treason and wilful homicide. If this benevolent change in our laws has not diminished, it has not increased, the number of crimes. A sanguinary law, a law opposed to the feelings of humanity, cannot be executed. When death is the punishment to be inflicted, jurors will acquit, where, had the punishment been milder, they would convict, and the criminal have suffered for his offence.

If the Penitentiary System should be abandoned, I know no other that can supply its place. To doom the criminal to *a life in chains* is more disgusting to humanity, if not more expensive, than condemning him to labour for life in a Penitentiary, where he may, without chains, be equally as well secured. And as to transporting criminals to a distant country, I know of no rightful authority which one nation has to send their criminals and outcasts into the territories of another. To send them to some desolate island or country, if such can be found, still they must live in the neighborhood of some other people; and it would be an act of injustice in us, to force bad neighbors upon them—an act which cannot be justified upon the principles of either policy or morality. For a nation, or a state, to establish a settlement composed of *criminals*, whom they consider dangerous to the well-being of society, appears to me hostile to the genius and principles of all civil institutions. But if there were no objections arising from policy and mo-



ral considerations; to the transportation of criminals, the expense would be great, and if carried to a considerable extent, the transportation would be impracticable.

If men of talents and information would devote their time and attention to the improvement of our Penitentiary System, I think most of the objections to it would be obviated, and the nation derive much greater benefit from the establishment, than they do at present. Much care and sound discretion ought to be exercised, in selecting men, who possess the peculiar and necessary qualifications for the good government and prudent superintendence of those institutions. Much, very much indeed, depends upon the character, disposition and capacity, of those officers. A good law may be administered in such an improper manner, as to render it more than a *dead letter*—a curse to society.

Effectual measures should be adopted to separate, in the Penitentiary, old offenders from the young and inexperienced; otherwise, the latter, instead of being reformed, will become adepts in crimes, and when the term of their confinement expires, they will return to society more wicked and abandoned than when they left it.

The power of granting *pardons* to convicts, should seldom be exercised. The *certainty* of punishment has a great, if not the most powerful, influence upon the wicked, in restraining them from the commission of crimes. The government should, therefore, avoid every thing that has a necessary tendency to impair the force of that certainty. A hardened, subtle offender, dead to moral feelings, calculates upon the many chances he has to escape punishment. His hopes are strong that he shall not be suspected—that if he is suspected, he shall be able to avoid arrest—that if arrested, proof will not be obtained to convict him—if convicted, that he shall be pardoned. That spirit of benevolence, which often prompts public officers to pardon the guilty, does honor to the heart, but it impairs the security of society. During the four years I was governor of this state, I pardoned only two of the convicts who were confined in the state prison; though the applications for the first two or three years, were numerous, and supported by the recommendations of many respectable characters. I did not consider myself at liberty to question the propriety of the opinion of the court who rendered the judgment; I believed they were the only tribunal competent to pronounce upon the innocence or guilt of the accused; and that their decision ought to be conclusive. I thought it my duty to pardon a con-

vict who was insane; or approached a state of idiocy; or when sentenced only for a term of years, if he was visited with sickness, which from the want of free air and better accommodations, would probably terminate in death. Of the convicts whom I pardoned, one was nearly in a state of idiocy, and the other, the physicians and officers of the prison represented to be of the last class, and such, from his feeble emaciated state, he appeared to me; but within three days after his liberation, his health was sound, and he again committed felony.

I rejoice that the business of preparing a general Report upon the subject of the Penitentiary System is assigned to such able hands; and I shall esteem it as a favor to receive a copy of it, when published.

I have the honor to be,

Respectfully,

Sir,

Your obedient servant,

WILLIAM PLUMER.

HON. CADWALADER D. COLDEN.

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*Letter from the Hon. LEVI WOODBURY, one of the Judges of the Supreme Court in New-Hampshire.*

AMHERST, (N. H.) Oct. 7, 1820.

SIR,

While on the present circuit, I have received a line from a Committee on the Penitentiary System; and am requested in a postscript, to forward my answer to you.

In reply to the questions which they have had the politeness to address to me, I have leisure to make only a few very general, and very hasty remarks.

As respects the effect of that System, which is the first enquiry, I entertain a decided opinion in favour of it. Not on account of its reforming power, which is somewhat questionable; but because the Penitentiary Code is more lenient than former ones, and, though in some places more expensive, yet the disproportion here is not very great and under it the number of crimes has diminished.

Before its introduction here, our laws punished with death—treason, murder, rape, sodomy, burglary, arson, robbery, and one species of forgery. Fines and imprisonment, the lash and the pillory, were also bestowed with unsparing severity, on minor offences. But the two last

modes of punishment are now totally abolished, and death is inflicted only on the traitor and the murderer.

The expenses of this System are, to be sure, greater than those of the summary punishments before mentioned. But the difference is yearly diminishing, in consequence of an improved economy, derived from experience, in the management of our state prison. Provisions are purchased cheaper—guards and directors are less numerous—and the labour of the convicts, being farmed out to individuals, is much more productive.

It is to be remembered, also, that the expenses of convictions are now less, as the convict, though unreformed, cannot in the smaller crimes, offend so often as formerly.

In relation to the second enquiry, I apprehend, that the ends of the institution in this country have in part failed; because too much was expected from it. The reformation of the convicts, the expenses, and the number of offences have not accorded with the sanguinary expectations of philanthropists.

But a general improvement in morals, ought not to have been anticipated, without the use of additional means. The prisoners, according to the enormity of their crimes, should be classed, and marked with some distinctive badge. They should, during the day, be kept more quiet and secluded from either society or conversation; and, during the night, wholly separated from each other. When their term of service expires, they should, also, to prevent temptation to commit new offences, be furnished with such portion of their labours as will maintain them, till regular employment can be obtained.

The disappointment as to the expenses, has arisen from the circumstances, that manufactures, on which the convicts have been necessarily employed, have been unprosperous—that these Penitentiary institutions, being of recent origin, could not be conducted with that providence and judgment, which would flow from experience, and that the expectations on this subject, were in themselves, highly visionary in any state of society, when public institutions must be left to the management of agents, who possess, in their prosperity, no individual interest.

As to the number of crimes, they have not increased in this state, as in places where severe punishments have been retained. The last four years, there has been a gradual decrease: and if, on our seaboard, the



contrary has been experienced, it has, in a great degree, happened from the circumstance, that the disordered soldiers and sailors, of both Europe and America, have been there flung to famish or steal.

My opinion on the 3d and 4th questions, must be obvious; and on the 5th, I would merely suggest, that, for repeated offences by the same individual, imprisonment for life; or, if that be too expensive, capital punishment may be expedient. So in all cases of conviction, after a pardon: for in these instances, hope of reformation has vanished; and the violated laws should have their victim, unless he can be withheld effectually from future crimes, without too much expense to the public.

As to transportation, we have no convenient Botany Bay; and if we had, the Penitentiary System may be made equally economical.

In fine, give me leave to add, that in the consideration of this System, it should never be forgotten, that the present expenses for the support of convicts are a less, and more equal tax on the public, than their depredations when at large: and that security in person and property, which are pecuniary objects of civil society, is much greater, when a horde of criminals, of every grade, are in safe confinement, than they are when prowling abroad. It is true, they might be executed; but this is abhorrent to the humanity and mildness of our institutions, and is not to be done, unless the expenses of the Penitentiary System, and the increase of crimes, under it, are such as to render the death of offenders indispensable to the safety of the public.

Excuse my haste,

Dear Sir,

And believe me,

Most respectfully, yours,

L. WOODBURY.

Hon. C. D. COLDEN.

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*From SAMUEL SPARHAWK, Esq. Secretary of the state of New-Hampshire.*

CONCORD, (N. H.) Aug. 9, 1820.

MY DEAR SIR,

Before receiving your favor of 21st ult. I had frequently thought of writing you, if it were but to acknowledge those repeated tokens of your remembrance—the pamphlets and papers which I have received,

and am weekly receiving from you. But this, like many others of my thoughts and purposes, would probably have proved abortive, had you not broken the silence.

I have attended to your enquiries, and will now attempt briefly to answer them.

The first is, whether the State Prison in this state has answered the expectations of the public, as a place of punishment and reform?

What these expectations were, before the experiment was tried, I don't very well know, but suspect they were raised to a higher pitch than deep thought and careful enquiry on the subject, would have authorised.

Confinement to hard labour, is a punishment, more or less, severe, according to the temper, disposition, and habits of the person subjected to it.—To some, it seems to be very grievous; to others, comparatively light. I am inclined to the opinion, that the mass of our criminals do not view it with any great degree of terror.

As a place of reform, the effects of our State Prison have also been various. Since November 1812, when it was fitted for the reception of convicts, 150 have been committed for various offences, and different terms of confinement—chiefly from two to five years. A number of them have before been tenants of other State Prisons, and four after having been discharged from ours, have returned on a second conviction.

For a time, the number of prisoners continued pretty uniformly to increase, till it amounted to 74, the largest number ever within our walls at one time. Lately, though fluctuating, it has been rather decreasing, which would seem to be a favorable symptom—the present number is only 55.

The general conduct of the prisoners, has been peaceable and submissive, though with some exceptions. Indications of reform have appeared in many, which, perhaps, have proved rather superficial, after their restoration to liberty. There are instances, however, within my knowledge, of convicts becoming reputable and industrious citizens, after having served out their *apprenticeships*. On the other hand, it must be acknowledged, that some shew no signs of reformation whatever.

On the whole, it is my opinion, that the advantages resulting from our Penitentiary, considered as a place of punishment and reform, are

as great as could reasonably have been expected, though I do not think they have fully answered the expectations of the public.

If not, you enquire 2dly, Whether the failure has been owing to intrinsic defects in the Institution; or, to defects in the construction of the edifice, and our municipal regulations?

That the expectations of the public have not been more fully answered, may be owing to defects, partly in the System itself, and partly in our municipal regulations. Improvements in both, have occasionally been adopted. Two years since, the old Board of Directors, was abolished, and the affairs of the prison were placed under the immediate direction of the Governor and Council. A new warden or superintendant was appointed, and the rules and regulations for the government of the interior of the prison, underwent some revision; all which changes, have proved salutary. Further experience, will probably suggest other improvements; but I am not aware, at present, of any material defects in the System, on the existing regulations. Neither am I aware of any important defect in the construction of the edifice; nor do I recollect ever having it suggested that alterations essentially advantageous, might be made in this respect—some speculations of Jeremy Bentham, or the like, perhaps, excepted.

Your third enquiry, viz. “Has the state of New-Hampshire gained, or has she lost by the establishment of her Penitentiary, in a pecuniary point of view?” is easily answered. In a pecuniary point of view, she has lost. The expenses of the Institution have far exceeded the gains derived from it. Besides the first cost of the buildings and appurtenances, (say \$37,000) there has since been drawn from the treasury, to defray the expense of additional buildings, for the maintenance of the convicts, pay of the officers and watchmen, and other incidental and casual expenses, about \$35,000,—of which sum between four and five thousand dollars was expended in additional buildings, including a work-shop of brick, in lieu of a wooden building, which was burnt. Whereas, the profits arising from the labour of the convicts, &c. amount to but little more than \$16,000. It is worthy of remark, however, that since the improvements, before mentioned, were adopted, there has been a considerable reduction of expenditure. The year ending May 31, 1819, the actual expenses exceeded the profits, by about six hundred dollars only, and the last year, by about four hundred.

But there is another consideration deserving of attention, in estima-



ting the loss or gain to the state. The present System, enables us to compare the one with the other, and accurately strike the balance—which indeed proves to be a heavy loss. But what would the loss have been under the former System? Would it, upon the whole, have been less to the community? I think not, though I have not the means of forming a correct opinion.

I have not seen the publication by Mr. Rosco, which you mention, but am glad to hear of so able a writer upon so important a subject. In Great Britain, doubtless a radical change is necessary; but I was not aware that the construction and discipline of our prisons, in this country, were so alarmingly defective, as to require a radical change; neither can I readily conceive it will become necessary, universally to resort to solitary confinement, as the only effectual method of punishment and reform. But I will refrain from any further expression of my sentiments, until I have a view of the *whole ground*, in the Report, a copy of which you kindly promise me.

Sincerely, and with great regard,

Your friend,

S. SPARHAWK.

C. G. HAINES Esq.

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*From the same.*

CONCORD, (N. H.) Aug. 11, 1820.

DEAR SIR,

After having sent my letter of the 7th to the post office, I noticed in the Columbian of the 4th inst. an article taken from the Patriot, of July 11, headed, "New-Hampshire State Prison;" wherein, after stating the gain of the last year to be \$457,28, another statement is given, showing a *further gain* of \$454, 55, which is incorrect. The former sum includes the *whole gain* to the state *exclusive* of the warden's salary, which being added to the expenses, will turn the balance the other way—making a loss of about four hundred dollars, as stated in my letter. The sum of \$454, 55, said to be *further gained*, was merely the result of another process, which ought to have shown, not a further gain, but the same balance, i. e. the result of each process should have been the same. They are nearly so, but not exactly.

The same number of the Patriot, contains a summary statement of the pecuniary affairs of the prison, for the last four years; showing the

balance against the Institution, or loss to the state, at the end of each year. This statement will also appear at variance with that I lately sent you. The former, represents the prison as only \$12,388 in arrears, on the first of June last ; whereas in my letter, the loss was estimated in round numbers, at \$19,000. The difference arises from the circumstance of the warden's and director's salaries being included in the latter sum, and not in the former.

The statement in the Patriot, also exhibits a balance against the Institution, on the 1st of June, 1819, greater, by upwards of \$3000, than that of the preceding year, which would lead to the inference, that the expenses of the year, ending June 19, had exceeded its profits by that sum, which is not the fact. When the new warden entered on the duties of his office, the property appertaining to the prison, being appraised, amounted to less, by about \$2000, than it had been estimated in the last preceding report of the former warden. Thus a reduction of the value of the property, which really existed, and should have appeared in the estimate of 1818, was thrown upon the succeeding year. This, however, is of no importance in a general view of the subject ; but I thought it might be well to offer this explanation, otherwise, you might be puzzled with the discrepancy between this statement, should you have seen it, and my account of the loss incurred the year ending May 31, 1819.

Being rather in haste, and frequently interrupted, I fear I have not written very intelligibly or legibly ; but if you can discover any meaning, you will excuse the rest.

Yours, with much esteem,

S. SPARHAWK.

C. G. HAINES Esq.



# VERMONT.

*From the Honorable DANIEL CHIPMAN, Counsellor at Law,  
late Member of Congress.*

MIDDLEBURY, Jan. 29, 1821.

SIR,

The letter from the Committee of whom you are Chairman, under date September, 1820, requesting information relative to the Penitentiary System, was duly received. It has hitherto remained unan-

answered, by reason of constant and necessary attention to my professional and other business. Possibly, however, I have not improved the first leisure moment, from an impression, which I yet sensibly feel, that I can give the Committee no aid in their investigations. But such is the importance of the subject, and I so highly approve the course which the Committee have taken to enable them to arrive at a clear and satisfactory result, that I could not remain silent. It gave me peculiar uneasiness when I reflected that my silence might be construed into an indifference and want of interest in the subject.

I cannot, however, attempt to give an answer to either of the questions proposed, but merely give you the general view I have taken of the subject.

The Penitentiary System was introduced in the United States when there was a rage for improvement. It was supposed by many, that the world, or rather some individuals, had been suddenly enlightened; that the dictates of experience were only so many obstacles to the perfectibility of human nature, of which they talked so much, and to which they really believed they had arrived; and that they could, by a mighty effort, bring the darkened and lagging world up to their own elevation. This day of enthusiasm has passed away, and we find ourselves in the situation in which imperfect man has ever been: knowing but very little which it is useful to know, but what was known before; and indeed it requires labour to keep the stock good, if I may so say, and transmit as much to posterity as we might learn from those who have gone before us. True it is, that all our institutions are imperfect, and would therefore seem capable of improvement. One difficulty is, that mere considerations of duty do not excite to action; some passion must be aroused, an enthusiasm must be imbibed, in order to excite to action, and introduce any considerable improvements. When thus excited, we are apt to let go our hold of experience, and turn out visionary projectors. Even the exalted talents of Lord Mansfield did not wholly protect him against this weakness of human nature. He entered upon the business of improving the system of the Common Law with no more ardour than was necessary to effect the object, and yet sufficient to lead him, in some few cases, to mar the system he was attempting to improve, and which he did improve beyond any other judge on the English bench.

But the projectors or promoters of the Penitentiary System, were



peculiarly exposed to an enthusiasm which led them to expect beneficial effects, which could never be realized. Every feeling of humanity was enlisted—it was so pleasant and so satisfying, to think not only of saving the life of the offender, but of reforming him, and restoring him to society a useful member. It was also calculated that the punishment would strike a dread upon the vicious, equal to an ignominious death upon the gallows. I well recollect that I entertained such *notions*, for such I now view them.

The State Prison in Vermont was erected and organized in 1808, and the Penitentiary System went into operation in 1809. Confinement in the State Prison is now the punishment for all high crimes, except treason and murder. False witness, by which life is taken; and arson by which any person shall suffer death, or be injured in his body or members; and for inferior crimes, down to petit larceny, inclusive. The Governor and Council have the power of pardoning. This body consists of twelve Counsellors, chosen by the people annually, and the Lieut. Governor, who sits as Counsellor when the Governor is present. The Governor presides as chairman: the Governor and Council is a branch of the legislature, in place of your Senate, but with more limited powers in legislation. The power of pardoning has been exercised, as might have been expected from such a body, very liberally: a number have been pardoned every year. When the system first went into operation, it was clearly visible that the punishment struck offenders with a high degree of dread; but it is now universally observed that the dread of punishment is almost wholly worn off. The prisoners live comfortably while in prison, and it is perfectly evident that most of them think nothing of the disgrace of confinement. As to reforming the offender, it is out of the question, in the minds of the most observing. I only wonder how it ever could have been thought there was any considerable chance for reformation. The prisoners are only exposed to corruption. A young man who has been detected and punished for the first crime he has committed, and who has no stated habits of vice, is confined with old and hardened offenders, and those will have an influence upon the young mind—he will, in a measure, look up to them. But if the prisoners are kept in such a manner that they are not exposed to corruption, what chance for reformation? We find no reformation, in fact, and I think we have no right to expect it. Man is emphatically a creature of habit:—he is

governed by habit, if we may so say. The moral faculty requires exercise to keep it in vigor, that it may perform its office, as much as the body. Confine a man ten years in the State Prison, removed of course from all temptations to vice ; he may be said to lose the habit of resisting them and when let into the world again surrounded by temptations, he gives way to the first which is presented.

I have made use of too strong language for a sober discussion ; but I must say that confinement to hard labour, for the reasons above mentioned, has a natural tendency to weaken the moral faculty, by depriving it of exercise, and the culprit leaves the prison in a state more liable to give way to temptations than when he was committed. Thus it has happened with the Penitentiary System, as it usually happens upon the introduction of any new system—the great good to be produced, so certain in theory, is not obtained in practice. But unforeseen evils are produced. Such has been the disappointment with respect to the Penitentiary System, in this State, that almost every reflecting mind is brought to a stand, and has endeavored to make a comparison between the former system of capital and other punishments and the present system. In making this comparison, we meet with difficulties in the outset ; such was the state of society when the present system was introduced, and such the paucity of crimes, that neither capital or other punishments had any visible effect. If we take a view of the effects of capital punishments in Europe, and compare them with the effects of the Penitentiary System here, we advance scarce a step towards a solution of the great question—“is it politic and necessary to abandon the Penitentiary System, or is it better to attempt its improvement?” Such is the difference between the state of society in Europe, with their crowded and half starved population, and the state of society with us, that any one system of punishments must produce very different effects in the different countries, and probably no possible system would be the most beneficial one in every country. An adaptation of a law to the state of society, in order that it may be useful, is not more obviously necessary in any branch of municipal regulations, than in the criminal code. If the law inflict punishment unnecessarily severe, it will be executed with no degree of certainty, and the dread of punishment will be lost in the chance of escape. The community must be alarmed by the commission of crime : an interest in their own security alone will overcome their feelings of

humanity, (false humanity in most cases,) and reconcile them to sanguinary punishments. This consideration alone should induce our legislature to continue the Penitentiary System. But I really cannot conceive how you can live under such a system, in so populous a city as that of New-York.

We have no populous towns, nor shall we ever have. I believe, therefore, that the Penitentiary System may be continued in this state, for all future time, with some essential improvements, which may take place, nay, they will take place, if, as I believe, crimes will be multiplied, and increase indefinitely, under our present system. The alterations I should propose to make would be something like the following:—To make some of the higher crimes capital; say forgery and horse-stealing: inflict corporal punishment for some of the inferior crimes, such as petit larceny, as formerly: and, by the constitution, take away the power of pardoning those committed to the State Prison. Under such a system, we could provide buildings sufficient to contain all who would be committed, and should not be compelled to let out a part to make room for others. And yet I have no doubt, that if the power of pardoning had have been taken away in the outset, the State Prison at this day would have had a less number of tenants than it has at present, which number, by the way, is now 110 only. The committee will readily perceive that if I am correct in the view I have taken of this subject, I am not in a situation to give them any aid in the arduous task assigned them, of devising the best system for the punishment of crimes in the state of New-York.

If incorrect in the view I have taken of the subject, what I have said will be wholly useless. However this may be, I hope the Committee will do me the justice to believe, that I feel a deep interest in the result of their labours, and shall be highly gratified with their Report.

Very respectfully,

Your obedient servant.

DANIEL CHIPMAN.

Hon. CADWALLADER D. COLDEN.

P. S. Permit me to introduce another subject, not connected with the foregoing, but related to it. We have no law in this state, and I take it you have no law in the state of New-York, making it penal to counterfeit, or pass counterfeit bills on the Canada banks; and they have no law in the province of Canada, making it penal to counterfeit



our bills. The consequence is, that they openly, and with perfect safety, set up their presses in the province of Canada, on the borders of our states, and counterfeit our bills and keep them for sale. In this state of security, they have made wonderful improvement in the execution of the bills, and do, and forever will, find purchasers among our citizens. We may fill our State Prison, yet the crime will not be prevented, or even checked. If this can be prevented, does it not savour of criminality to neglect it. They establish themselves on this side the line, and with equal safety, counterfeit Canada bills. Should we not, then, in the state of New-York and in Vermont, make it penal to counterfeit the Canada bills, or to pass such counterfeit bills; and would not the government of Canada, on a representation made to it, of the real state of the case, pass a law making it penal to counterfeit bills on the banks of the United States? Should they do so, they would, in that government, make it a capital offence, of course.

This done, we should, compared with what we now experience, have very little trouble with counterfeit bills. We know by experience, that before they found they could carry on the business with safety in the province of Canada, they used to attempt setting up their works in the states, and that they seldom got them into operation before they were detected and broken up. If these counterfeiting establishments can be broken up, we ought to effect it. It is a duty we owe to the honest and industrious part of community, to protect them against the counterfeit bills; and to the vicious part of community, to remove the temptation to purchase.

D. C.



## VIRGINIA.

*Letter from SAMUEL P. PARSONS.*

VIRGINIA PENITENTIARY, 11th Mo. 14, 1820.

*To the Committee appointed to Report on the Penitentiary, &c. in the State of New-York.*

GENTLEMEN,

Your written communication did not get to hand until the 6th instant, otherwise you should have heard from me ere this.

Before I proceed to answer your queries on a subject in which I feel a deep interest, I beg leave to make a few general remarks, in relation to the Penitentiary System—a mode of punishment very conso-

nant with our republican institutions, and one that has not received that attention which its importance requires. That any institution, the object of which is to better the condition of our fellow men, should meet with opposition, before it has been fairly tried, and every exertion used to promote its usefulness, is much to be regretted.

I consider few subjects less understood, and of more importance, than this. When we speak of Penitentiaries, we mean places to punish the guilty and render them better ; at the same time to deter others from the perpetration of crimes, the success of which depends on two great points : First, laws that are equal in their operation, and certain in their execution. Secondly, a suitable head to administer these laws properly, and to direct all its movements. This, perhaps, is the greatest difficulty, and requires the most profound and judicious wisdom in making the selection. On this every thing depends, and without it every thing is lost. There may be inspectors, agents, clerks and assistants, which will avail nothing if the head is materially defective.

To organize such an institution to advantage, a man should be got, known for his virtue, mechanical knowledge, industry and intelligence ; mild, but decisive character ; benevolent and charitable. He should be responsible for the whole government. There should be a board of a few discreet and intelligent men, not exceeding seven, to superintend the disposition of the manufactures, and to control the many concerns of the establishment. The superintendant to have power to form all rules and regulations for the government of the interior, subject to the negative of this board. They should be co-ordinate in their functions. All other officers should be appointed by the superintendant, likewise subject to the negative of this board. In fact, the board to act in the capacity of advisers and counsellors, except in relation to sales, purchases, &c. for the use of the prison—here they should have the sole power. As the superintendant must know what is wanting, and when, and the quality of the article, he should, of course, be the purchaser of the raw materials for the use of the institution.

From my youth I was a friend to the system ; believing that justice required punishment to be apportioned agreeable to the magnitude of guilt ; that it was inhuman to involve all offenders in the same punishment ; and, as my information was very limited on the subject, never

having seen a similar institution, other than this, upon my appointment to the office I now hold. I was a mere novice in the practical management of such an institution; but I had much at stake, and began to search for the defects and their causes, and have great satisfaction in having been able to obtain many alterations, and make essential improvements, in the government and police of this prison. Still it is far short of that perfection it is susceptible of attaining. I am flattered with a prospect of the legislature doing something towards improving the system at its ensuing session.

For some valuable information on the Penitentiary System, I would refer you to several essays that appeared in the *Enquirer of Richmond*, during the last summer; they were re-published in many of the northern papers; should they not be obtained in your city, I will endeavor to procure and forward them, with our annual report, ending on the 30th of 9th mo. last, as soon as it is printed.

Should these hasty remarks throw any light on the subject of your enquiry, I shall be well compensated in aiding and promoting so laudable an undertaking. I shall be pleased with a copy of your Report.

Respectfully your Friend,

SAMUEL P. PARSONS.

*Answer 1.* I am not able to say what has been the effect of the Penitentiary System in the United States; but believe that in Virginia, and some others, it has had some good effect. It certainly is, in my view, susceptible of such improvement as to be one of the greatest institutions the world has yet produced. I find that, between the years 1800 and 1815, there were fewer capital crimes committed in this state than at any 15 previous years, since the adoption of our government; and this I attribute to the certainty of punishment, because of its mildness.

*Ans. 2.* The Penitentiary System has measurably failed to answer the ends of its institution, and the causes are attributed to various defects, viz: The pernicious practice of frequent pardoning—a sickly sympathy extended to those professing reformation, under a cloak of religion—a deficiency in the qualification of officers, who are not clothed with sufficient power to suppress all disorderly conduct in the convicts—the want of a proper head to direct its movements—too great an intercourse, out of wanton curiosity, into the prison—too many are lodged in a room—the confinement not sufficiently solitary.



*Ans. 3.* I think it would be bad and inhuman policy, and unnecessary, to abandon the Penitentiary System; because I have no doubt but it may be improved, to national advantage, and made to answer the ends for which it was created. There is no mode of punishment so likely to check the career of vice, as that of the Penitentiary.

*Ans. 5.* I believe that capital punishments have not yet succeeded, in any country, to secure the community against the commission of crimes. I have seen some late accounts from England, where the criminal makes a laugh at going to the gallows, while others are committing the same crime for which he is then to be punished. It would be very difficult to inflict capital punishment, in this country, to a greater extent than the present existing laws require, neither is it consistent with a Christian nation.

*Ans. 6.* That of transporting criminals, from a country like this, I consider absurd, inconsistent, and injurious; because we have no territory, other than on this continent, and if we had, they must be left to destroy each other, or an army created to keep them in order, which is, I think, inconsistent with the republican institutions of this country. As to reforming convicts by dooming them to the chain, I consider the worst of all. It degrades, hardens, and genders the most inhuman and cruel tyrant in the world.



## NEW-JERSEY.

*From WILLIAM NEWBOLD, Esquire.*

SPRINGFIELD, N. J. 11th mo. 1st, 1820.

ESTEEMED FRIENDS,

Your circular, under date of Sept. 1820, arrived when I was on a distant journey, and since my return have been pressingly engaged. I mention these circumstances as an apology for not giving it earlier attention.

The subject introduced, undoubtedly, is one eminently interesting to society, and therefore entitled to close investigation, before a final decision is had upon it—nor am I dissatisfied in finding that the canvas is set on foot, believing that if it is dispassionately conducted, it will be ultimately productive of good.

I am aware that there is much diversity of opinion respecting the

Penitentiary System—but I should most willingly hope, that it is rather on the point of political expedience, than of moral soundness, that any doubts exist;—for, though the first, (as a mischievous doctrine,) might produce unhappy effects; yet I conceive the latter to be much more alarming, as it would be indicative of a degeneracy of morals, and must necessarily influence a decision upon the main question. For our criminal laws, though they were made literally perfect, yet if they are not congenial with the temper of the people, or the feeling of the people not in unison with the laws, they will be little more than a nullity.

My speaking thus in allusion to Penitentiaries, is from the view of them, on the broad basis of a system of reform. Their legal and internal regulations, I consider a somewhat distinct matter, and of subordinate nature. For if it is correct as a *principle*, that the system of reform is fundamentally sound, the great point is settled—and it is *one* to which all the practical operations ought constantly to converge: and that *it is sound*, I think no moral philosopher can rationally doubt.

To come, however, to the particular subjects of enquiry, I answer to the first, That, having no data to proceed upon, I cannot say any thing that would be conclusive or satisfactory.

2d. The Penitentiary System *has* failed to answer the ends of its institution—and this failure may be attributable, both to a defect in the legal provisions, and to the internal police of the establishments. For, as I have already premised that *reform* is to be the paramount consideration—so in accordance with this doctrine, the authoritative acts of man toward his fellow man, must be with a view to his moral good—political expedience will then, (as it always ought,) be subservient to moral right—and the only question will be, how best to attain the desired object;—which must, in a great measure, be decided by existing circumstances. While, on the other hand, fruits answerable to the reasonable desires of the philanthropist, or the seeming expectations of the community, are not to be looked for from the System, in so defective a form.

3d. It is not politic or necessary, to abandon the Penitentiary System, unless there is such a general depravity of morals in our *Republics*, that it cannot be sustained—and if that is sorrowfully the fact, it is a plain index to their downfall; but if the case is otherwise, attempt, by all reasonable means, its improvement.

4th. If the Penitentiary System is thus abandoned, I think we need not much concern ourselves, to find a substitute ; but rather leave the concern, in its untoward state, to the conflict of the boisterous elements.

5th. A radical defect in our present Penal Code, is that capital punishment is authorised in any case ; consequently it would not promote the ends of justice, nor contribute to public security, to extend it, unless as before stated, we have not virtue enough to do otherwise, and if we have not, the power, (or at least the advantage,) of choice, is gone. The ship may be given up.

6th. The practicability of transporting criminals, would depend on certain circumstances ; particularly that of having a suitable place to consign them to. If such a place was had, it appears not very improbable that it might, in cases of a particular description, be the best way of attaining the end in view ;—and if so, then it would be politic, but not otherwise. Nor would it be consistent with the nature of those institutions, nor reform criminals, to doom them to the ignominious and galling chain ; it would be a severity tending to make the mind more callous, and consequently, fit it for increased crime.

But, although cure is good, prevention is better ; and while we are laudibly concerned in endeavoring to reclaim the evil members of society, let us look to the source from whence much of the malady springs, and endeavour to lessen crime, by an increased attention to correct education, and moral instruction, which, being promoted by good laws, well administered, will leave fewer criminal subjects, to afterwards reclaim.

I have, with frankness and freedom, attempted to answer the queries proposed, by briefly expressing my ideas on the interesting subject. Your liberality will excuse the imperfections of the composition.

With unfeigned desires that the good work before us may prosper, and its benefits be diffused over our beloved country,

I am, with sentiments of respect and esteem,

Your sincere friend,

WILLIAM NEWBOLD.

To C. D. COLDEN,

P. A. JAY,

J. MILNOR,

T. EDDY,

C. G. HAINES.



## CAPITAL PUNISHMENT IN ENGLAND.

The following testimony, is embraced in the Report from the select Committee on the criminal laws in England, to the House of Commons, on the 8th of July, 1819. We trust that the facts here laid before the American public, will carry conviction to every bosom. The whole Report, from which this extract is taken, together with the details of evidence and the appendix, makes about 300 folio pages. If the great and luminous document from which we gather the facts now submitted, could be extensively read in the United States, the good old doctrines of William Penn, Benjamin Franklin, William Bradford, and Benjamin Rush, might again be fashionable in a christian community.

What do the following witnesses prove? They substantiate what we assert in our Report. The severity of punishments will defeat the execution of the law. Witnesses, grand juries, petit juries, and even executive magistrates, will avoid the infliction of death, where they can do it, and thus let criminals escape, and crimes go unpunished.

“Your Committee have sought for evidence on these subjects from those classes of men who are sufferers from Larcenies, who must be prosecutors where these Larcenies are brought to trial, who are the witnesses by whom such charges must be substantiated, and who are the Jurors, by whose verdicts only effect can be given to the laws. On this class of Persons, where the crimes are most frequent, and where long and extensive experience allows little room for error and none for misrepresentation, or in other words, on the Traders of the cities of London and Westminster, Your Committee have principally relied for information. To the clerks at the offices of magistrates, and to the officers of criminal courts, who receive informations and prepare indictments, to experienced magistrates themselves, and to the gaolers and others, who, in the performance of their duties, have constant opportunities of observing the feelings of offenders, the Committee have also directed their inquiries; *their testimony has been perfectly uniform.*

“Mr. Shelton who has been near forty years Clerk of Arraignment at the Old Bailey, states, that Juries are anxious to reduce the value of property below its real amount, in those Larcenies where the capital punishment depends on value; that they are desirous of omitting those

circumstances on which the capital punishment depends in constructive burglaries; and that a reluctance to convict is perceptible in forgery.

“*Sir Archibald Macdonald* bears testimony to the reluctance of prosecutors, witnesses and juries, in forgeries, in shop-lifting, and offences of a like nature. He believes that the chances of escape are greatly increased by the severity of the punishments. “Against treason, murder, arson, rape, and crimes against the dwelling house or person, and some others,” he thinks “the punishment of Death should be directed.”

“*T. W. Carr, Esq.* Solicitor of Excise, a very intelligent public officer, gave an important testimony, directly applicable indeed only to offences against the Revenue, but throwing great light on the general tendency of severity in Penal Laws to defeat its own purpose. From his extensive experience it appears, that severe punishment has rendered the law on that subject inefficacious. Prosecutions and convictions were easy when breaches of the law were subject to moderate pecuniary penalties; even a great pecuniary penalty has been found so favourable to impunity, that fraudulent traders prefer it to a moderate penalty. The act of counterfeiting a stamp in certain cases, within the Laws of Excise, was, before the year one thousand eight hundred and six, subject only to a penalty of five hundred pounds; but in that year it was made a transportable offence, of which the consequence was, that the convictions, which from one thousand seven hundred and ninety-four, to one thousand eight hundred and six, had been nineteen out of twenty-one prosecutions, were reduced in the succeeding years, from one thousand eight hundred and six, to one thousand eight hundred and eighteen, to three out of nine prosecutions.

“*Mr. Newman*, Solicitor for the city of London, speaking from thirty years experience, of the course of Criminal Prosecutions in that city, informed the Committee, that he had frequently observed a reluctance to prosecute and convict, in capital offences not directed against the lives, persons, or dwellings of men.

“*The Rev. Mr. Cotton*, Ordinary of Newgate, has described in strong terms the repugnance of the Public to capital execution in offences unattended with violence, and the acquiescence even of the most depraved classes in their infliction in atrocious crimes.

“*Mr. Colquhoun*, for twenty-seven years a police magistrate in this

Capital, and well known by his publications on these subjects, declares his firm conviction that capital punishment in the minor offences operate powerfully in preventing convictions; and that there is a great reluctance to prosecute in forgery, shoplifting, larceny in the dwelling house, burglary without actual entry, horse-stealing, sheep stealing, cattle stealing, framebreaking, housebreaking in the day time, robbery without acts of violence, and other minor offences, now subject to the punishment of death. According to the testimony of this intelligent observer, the public mind revolts at capital punishment in cases not atrocious.

“*Mr. Newman*, late keeper of Newgate, and connected with the administration of justice in London for forty years, gave testimony to the same effect.

“*Mr. Bassil Montagu* stated a fact of the most striking nature, immediately applicable only to one offence, but showing those dispositions in the minds of the public which must produce similar effects wherever the general feeling is at variance with the provisions of criminal law. From the year one thousand seven hundred and thirty-two, when embezzlement of property by a bankrupt was made a capital offence, there have been probably forty thousand bankruptcies; in that period there have been more than ten prosecutions, and three executions for the capital offence, and yet fraudulent bankruptcies have become so common as almost to be supposed to have lost the nature of crime.

“*Mr. Hobler*, clerk to the Lord Mayor and to the sitting magistrates in London for thirty years, stated the anxiety of prosecutors to lower the value of goods stolen; and has observed many cases of forgery, in which, after the clearest evidence before the magistrate, the Grand Jury has thrown out the Bill for some reason or other, where the magistrate had no doubt. The same solicitude to reduce the value of articles privately stolen in shops and dwelling houses, has been remarked by *Mr. Payne*, clerk to the sitting magistrate at Guildhall; by *Mr. Yardley*, clerk at the office in Worship-street, who has observed a disinclination to prosecute in all capital cases, except murder; and who says, that in larcenies he has often heard prosecutors, especially females, say, “I hope it is not a hanging matter;” and by *Mr. Thomson*, clerk at the office in Whitechapel, who represents it as common for prosecutors in larcenies to ask, “can this be put under forty shillings?”



“ *Mr. Alderman Wood*, a Member of the House, an active magistrate, and two successive years Lord Mayor of London, has strongly stated the unwillingness of shopkeepers and others to prosecute, the number of offenders who, during his mayoralty, owed their escape to this cause ; and his decided conviction, that if the capital punishment was taken away, the reluctance to prosecute would be greatly abated.

“ *Mr. Wilkinson*, a merchant in London, stated a case of property, to the value of one thousand pounds stolen from him, where he was deterred from prosecution by the capital punishment ; and expressed his belief that a similar disposition prevailed among persons of the like condition and occupation with himself.

“ *Mr. Josiah Conder*, bookseller, *Mr. Joseph Curtis*, currier, *Mr. Wendover Fry*, type-founder, and *Mr. John Gaun*, a merchant and shoe manufacturer, stated instances in which they were prevented by the capital punishment from prosecuting offenders, whom they would have brought to justice if the punishment had in their opinion been more proportioned to the crime. They also declared, that there is a general disinclination to prosecute among the traders of the city of London, or to convict in thefts without violence, and in forgeries.

“ *Sir Richard Phillips*, a bookseller in London and once sheriff, as well as often a juror, has in these several capacities observed the same facts. *Mr. Richard Taylor*, a common council man, prosecuted some men for breaking into his printing-office and stealing some property out of it, for which they were transported, but whom he would not have prosecuted if he had not previously ascertained that the connection of the printing-office with the dwelling house was not such as to make the act a capital offence.

“ *Mr. Richard Martin*, a Member of the House, informed the Committee, that the punishment of death prevented prosecutions in Ireland for horse, cattle, and sheep stealing, for privately stealing in dwelling houses and shops, and in general for all larcenies without violence. Though the extensive estate, of which he is proprietor, be almost laid waste by sheep stealing, he has been prevented from prosecuting by the punishment of death. If the punishment were reduced to transportation, he would certainly prosecute the offenders to conviction. He has no doubt that his estate would be better protected if the law were more lenient, and that the reduction of the penalties of the law would

promote the security of property throughout the province of Connaught.

“*Mr. James Soaper*, of Saint Helen’s Place, *Mr. Ebenezer Johnson*, of Bishopsgate-street, ironmonger, *Mr. Baker*, of the Tower, *Mr. Lewis*, a retired merchant, and *Mr. Garret*, an insurance broker, bore testimony to the general repugnance to prosecution which arose from capital punishment; some of them mentioned instances in which they had been deterred by that consideration from bringing offenders to justice. *Mr. Garret* said, that as far as his observation, there was not one in twenty who did not shudder at the idea of inflicting the capital punishment in cases of forgery. *Messrs. Frederic and William Thornhill*, hardware men, mentioned cases of theft in which they had forborne to prosecute on account of the punishment of Death. The former added, that he found it to be an almost universal sentiment among his neighbours and acquaintance, that excessive punishment tends very greatly to the production of crime; that he knows many persons who have been great sufferers by thefts in shops and dwelling houses, and who declare that if the punishment of such offences had been any thing less than death, they would have regarded it as highly criminal in themselves to have forborne prosecution, which they had felt themselves compelled to abstain from in every instance on account of the punishment, and must continue to act on the same principle of forbearance till there was an amendment in the law. He also informed the Committee, that from his knowledge of a great variety of cases, he was convinced the more lenient punishment would more effectually prevent forgery.

“*Mr. Collins* and *Mr. Crowther*, considerable and very respectable traders in Westminster, gave evidence which the Committee consider as of peculiar value. *Mr. Collins* has suffered both from larcenies and forgeries, and was restrained by the state of the penal law from bringing the offenders to justice, which he would otherwise have taken the greatest pains to do. He thinks that the laws of God do not permit life to be taken away for mere offences against property; and that among his friends, many of whom are traders in London and Westminster, he does not know a single exception from concurrence in such sentiments. *Mr. Crowther* stated, that no porter had left their establishment for twenty years for any other cause than theft; that a prosecution had taken place in one instance, and had terminated in conviction and condemnation. “The pain and anxiety,” he adds,

“occasioned by that event, until we obtained for him the Royal Mercy, none can describe but ourselves ; which made us resolve never to prosecute again for a similar offence.” The general opinion of the traders in London and Westminster is the same with his own. He declared, that if he received a forged bank note, he should be prevented from prosecution by the punishment of death, and that if the punishment were less than death, he should undoubtedly consider it as his absolute duty to bring the offender to justice. He believes that nine tradesmen out of ten agree with him.

“ *Mr. Stephen Curtis*, a leather factor in London, stated several cases of forgery, fraudulent bankruptcy, and larceny, where the persons injured declined to prosecute from apprehension that the offenders might suffer death ; this is the general opinion of the traders of London, though in the opinion of this witness, scarcely a shopkeeper from Cornhill to Charing-cross, who does not suffer from shop-lifting.

“ *Mr. Jacob*, who has lately travelled through England on business, and *Mr. Jennings*, for some time a shopkeeper near Bridgewater, gave some evidence tending to show that the general sentiments of Traders in the country were, on capital punishments, the same which the Committee had such ample reason to consider as the prevalent opinion of the same valuable class of persons in the Metropolis. *Mr. Jennings* observed, that these opinions prevailed among farmers as well as shopkeepers, and that the capital punishment prevented prosecutions for horse, cattle and sheep stealing, as well as from private stealing in shops and dwelling houses, and in constructive burglaries.

“ *Mr. Joseph Harmer*, who has practised for twenty years as solicitor at the Old Bailey, gave a testimony which the Committee cannot but recommend to the most serious consideration of the House. In the course of his practice he had confidential communication with at least two thousand capital convicts, and may be presumed to have as good means of understanding their temptations, their fears and their hopes, as any individual in the kingdom. He is now much employed by prosecutors, and from intercourse with them, as well as by former observation of their conduct, has the amplest means of knowing the influence which capital punishment has on their disposition, to aid and enforce the execution of the laws. The Committee must also add, that he appeared to them a man of sagacity, as well as of a conscientious



and humane character, whose opinions on this subject are entitled to much consideration. Every part of his evidence is so important, that they find it difficult to select particular facts as worthy of greater notice. He informed the Committee, that he knew many instances of persons injured by larcenies and forgeries, declining to prosecute on account of the punishment; that the same consideration strongly disinclines many persons to serve as jurors at the Old Bailey, and induces them to bribe the summoning officer not to summon them; and that he has seen juries influenced, as he believes, by the severity of the punishment in numerous capital cases, but especially in forgeries, give verdicts of acquittal where the proofs of the prisoner's guilt was perfectly clear. Old professed thieves, aware of the compassionate feelings of juries, are, he says, desirous of being prosecuted on capital indictments rather than otherwise. "The present numerous enactments to take away life appear to me wholly ineffectual; but there are punishments, which I am convinced a thief would dread, namely, a course of discipline totally reversing his former habits; idleness is one of the prominent characteristics of a professed thief; put him to labour; dabbachery is another quality, abstinence is its opposite; apply it; company they indulge in, they ought therefore to experience solitude: they are accustomed to uncontrolled liberty of action, I would impose restraint and decorum: were these my suggestions adopted, I have no doubt we should find a considerable reduction in the number of offenders." He states, that "he has often seen juries reduce the value of things stolen, contrary to clear proof; there is no reluctance to prosecute or convict, in his opinion, in murder, arson, burglary in its original sense of nocturnal housebreaking, highway robbery, with violence and murderous attacks on the person. The thieves observe the sympathy of the public; it seems to console them, and they appear less concerned than those who witness their sentence. Certainly, the general feeling does not go along with the infliction of death in the case of crimes unaccompanied by violence; there are very few advocates for the generality of the present punishments; these punishments rather tend to excite the public feeling against the Criminal Laws."

"Much of the above evidence sufficiently establishes the general disinclination of traders to prosecute for forgeries on themselves, or to furnish the Bank of England with the means of conviction, in cases where forged notes are uttered. There is no offence in which the in-

fiction of death seems more repugnant to the strong and general and declared sense of the public, than forgery ; there is no other in which there appears to prevail a greater compassion for the offender, and more horror at capital executions.

“ In addition to the general evidence above stated, to notorious facts, and to obvious conclusions of reason, Your Committee have to state the testimony of some witnesses of peculiar weight, on the subject of Forgery.

“ *Mr. John Smith*, a Member of the House, and Banker in London, stated, that he knew instances where prosecutions for private forgeries were relinquished on account of the punishment, and had no doubt that if the punishment was less, prosecutions would have taken place.

“ *Mr. Barnett*, also a Member of the House, and a Banker in London, is of opinion, that capital punishment goes extremely to discourage prosecutions in forgery ; he knows many instances of this, scarcely a year passed without something of the kind ; he is of opinion that the majority of private forgeries pass unpunished, on account of the severity of the punishment. The punishment of death tends, in his opinion, to prevent prosecution, and to increase the crime.

“ *Mr. J. F. Forster*, a Russia Merchant, and *Mr. E. Forster*, a Banker in London, gave some remarkable examples of the repugnance to prosecute in forgery. In one, by the connivance of the prosecutor ; a person who was introduced to the magistrate as a friend of the prisoner's, desired to see the forged cheque, snatched it away, and threw it into the fire ; a mode of avoiding prosecution which, from other parts of the evidence, does not seem to be uncommon. In another, a forgery to the large amount of fifteen hundred pounds, where the forger and the utterer were both in custody, the prosecution was relinquished merely because the offence was capital ; had the punishment been ever so severe, short of death, no endeavour would have been made to save the offenders. In the opinion of *Mr. E. Forster*, more than one half the private forgeries which are committed escape prosecution on account of the severity of the law ; he added an example of the like sentiments, in the offence of stealing in a dwelling house, which the Committee consider as remarkable, because it occurred in the officers of a public institution, who usually allow themselves to be less influenced by their feelings than individuals ; a committee of a

public institution, whose house had been robbed, would not engage in the prosecution unless the goods were valued under forty shillings. In this committee were persons of respectable condition in almost all the occupations which are most liable to loss by forgeries and thefts.

“*Mr. Fry*, a Banker in London, mentioned four cases of prosecution for forgery which were prevented by the capital punishment, in one of which the party injured swallowed the forged note, that he might not be compelled to prosecute. *Mr. Fry* explicitly stated, what is indeed implied in the evidence of the preceding witnesses, that as a banker, he should consider his property as much more secure if the punishment of forgery were mitigated to such a degree that the law against that offence would be generally enforced. In nine cases out of ten of forgery which he has known, there has been an indisposition to prosecute.

“*Dr. Lushington* declared that he knew, that in the minds of many persons there is a strong indisposition to prosecute, on account of the severity of the punishment; and that he had heard from the mouths of prosecutors themselves, who have prosecuted for capital offences, where there was a danger of the person's being executed, the greatest regret that they had so done; and many times they have expressed a wish, that had they been able to have foreseen the consequences, they would never have resorted to the laws of their country. He also related the case of a servant who committed a robbery upon him; the man was apprehended, and his guilt was clear; but *Dr. Lushington* “refused to prosecute, for no other reason, but that he could not induce himself to run the risk of taking away the life of a man.

“*Mr. Charles Attwood*, a manufacturer of window glass at Newcastle, and a seller of window glass in London, had observed a very considerable indisposition to prosecute in capital cases, among the traders of London generally; and conceives that this reluctance would abate, if the punishment were mitigated to something less than death.

“*Mr. Isaac Lyon Goldsmid*, a broker to the bank, and to merchants, whose experience in the transactions of bankers is very extensive, entertains no doubt, that the punishment of death has a tendency generally to prevent prosecution, and thinks that evidence to that effect might be discovered in hundreds of instances. A servant of his own committed a very aggravated forgery upon him. She confessed her guilt to the magistrate before whom she was taken; but it appearing



that if she was prosecuted at all, it must be capitally, *Mr. Goldsmid* declined any further proceedings, and she was liberated. In the next family in which she became a servant, she committed another capital felony; and again the severity of the law appears to have been her protection.

“*Mr. Daniel Gurney*, a banker in the County of Norfolk, declared his own reluctance, and had observed a similar reluctance among many bankers and traders in the country to prosecute in cases of forgery, in consequence of the severity of the law. The dread of being instrumental in inflicting death had, with himself, and to his knowledge with others, operated as a protection to the criminal. In illustration of his sentiments, he mentioned the case of a man who was *in the habit* of committing forgery, “and was not prosecuted in consequence of the capital punishment.” *Mr. Garney* considers that “his property as a banker would be more secure, if the punishment were not so severe, because there would be more inclination to prosecute.” He also suggested, that if in every town of sufficient importance, an agent was invested with full authority from the Bank of England, to stamp the forged notes that were presented to him, it would be a considerable check to their circulation.—In this opinion *Mr. William Birkbeck*, a banker in the West Riding of York, fully concurred; conceiving that if an agent of this kind were authorized to put a mark upon such notes, indicating that they were forged, it would probably throw them back on the original issuer so early, as to show him the futility of attempting to issue others of a similar description.”



## MR. ROSCOE'S VIEWS ON CAPITAL PUNISHMENTS.

The Committee extract the following arguments, on the great subject under this head, from *Mr. Roscoe's* very elegant and able book on Penal Jurisprudence. We wish to awaken the slumbers of the American people: we wish to correct the errors that are gaining ground.

### ON THE PUNISHMENT OF DEATH.

“If it be true, as before stated, that the proper object of human punishment is the reformation of the offender, it will follow, as a necessa-

ry consequence, that it is not allowable, under any combination of circumstances, to put a fellow creature to death.

In order to prevent the perpetration of sanguinary crimes it seems, in the first place, necessary, that the legislature should shew its abhorrence of the shedding of blood, and should inculcate, in the strongest manner, a sacred regard for human life.

A sentiment of this nature, impressed upon the feelings of a people, would be more efficacious in preventing the crime of murder, than the severest punishments.

Cicero calls his country "*Parens communis*,"—what should we think of a parent who corrects his child by putting him to death?

"The case of a civil ruler and his subject," says a sensible and energetic writer, is much like that of a father and his minor son. If the son behave himself unscemly, the father may correct him. If after all due admonitions, and corrections, the son should prove to be incorrigible, the father may expel him from his family, and he may disinherit him; but he may not *kill* him. All civil as well as parental punishments ought to be mild, humane, and corrective; not vindictive, inhuman and extirpating. They ought to be merciful, not rigorous; proportionate to the crime, not excessive; and tend to the reformation of the delinquent, but not to his destruction; and should be inflicted with reluctance, love and affection; not with passion, hard-heartedness, and asperity. The highest encomium that can be bestowed on good rulers is when we style them, *the fathers of their subjects, and the protectors of their rights*."\*

It is remarkable that those persons on whom the example of capital punishments is chiefly intended to operate, are usually such as have manifested the most striking disregard to their own lives; consequently, those upon whom the idea of the punishment of death is likely to make the least impression. A person who voluntarily places himself before the aim of a pistol, cannot be supposed to be deterred from that act by any apprehension of his life from remoter consequences.

It has, therefore, been proposed to place the murderer in such a situation as should effectually prevent a repetition of his crime; where, instead of escaping from ignominy and remorse by immediate death, he

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\* *Essays on Capital Punishments*. Philadel. 1811. Republished by Basil Montagu, Esq. in his *Collection of Opinions on the Punishment of Death*. Vol. iii. p. 159.

may exhibit, by a long course of humiliation and repentance, the fatal consequences of his guilt.

The effects produced by such an example might be advantageous, without being counteracted by other considerations. Whether the spectators who attend an execution, may be deterred from similar crimes by witnessing such a catastrophe ; or whether they may become in some degree hardened against the feelings of humanity, by the frequent recurrence of such spectacles, may at least be doubtful ; but a murderer, under restraint and correction for his crime, is an object, the sight of which, combining at once the enormity of the offence with the dignified forbearance of the law, must always be favourable to the best interests of the community.

Hence there is reason to presume, that punishments of this nature would tend more effectually to the prevention of crimes, than the dread of immediate death ; in which scene the criminal is the chief actor, and not unfrequently appears with considerable eclat. In fact offences that subject the perpetrators to death are committed no where more frequently than at executions ; and the horrible spectacle of the exposed body of a murderer seems to be only the prelude to similar crimes.

But if legislators and writers of great eminence have entertained considerable doubts, both as to the right and the expediency of capital punishment, even for the most heinous offences, how is it possible to justify the application of it to such crimes as *affect property only*, and that frequently to a very trivial amount ? “ Among the variety of actions that men are daily liable to commit, no less than *two hundred* have been declared by act of Parliament, to be felonies without benefit of clergy, or in other words, to be worthy of instant death. When we inquire into the nature of the crimes of which this dreadful catalogue is composed, we shall find it to contain transgressions which scarcely deserve corporal punishment ; we shall find it to omit atrocious enormities ; and so to blend all distinctions of guilt, as to inflict the same punishment upon the offender who steals to the amount of a few shillings in a shop, as upon the malefactor who murders his father.”\*

Nor is it only for the actual privation of property that the punishment of death is provided ; even many offences which seem to be

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\* Speech of Sir John Anstruther in the House of Commons, 1811.



merely legal trespasses, are included by the legislature in the black catalogue of capital crimes. Such offences are undoubtedly the proper objects of a correctional police, but surely no humane or considerate person can for a moment admit that they ought, in a well regulated community, to be punished with *death*. "It must be owned," says Blackstone, "that it is much easier to extirpate, than to amend mankind; yet that man must be esteemed both a weak and a cruel surgeon, who cuts off every limb, which through indolence or ignorance, he will not attempt to cure."

"It cannot be too strongly inculcated," says a noble and excellent writer on this subject, "that capital punishments, when unnecessary, are inhuman and immoral. Sensibility sleeps in the lap of luxury, and the legislator is contented to secure his own selfish enjoyments by subjecting his fellow citizens to the miseries of a dungeon, and the horrors of an ignominious death."\* So true it is, that the most cruel and unjustifiable laws are those which are intended to effect their purpose by a sudden and decisive process; as if the promulgator had thereby freed himself from all further danger and trouble on the subject. "This summary way of proceeding by capital punishments," says a distinguished writer of the present day, "though it may assume the appearance of vigilance and zeal in the public service, is, in reality, too well adapted to the indolence or the pride of men, in making laws which they are themselves under little temptation to violate. It presents itself readily to the coarsest understanding, and you fly to it with little reflection, though upon a collective view of all the circumstances which ought to regulate the measure, it will be found to require the greatest."†

Had it not been from the influence of examples handed down to the present times from ages of the darkest ignorance, it would scarcely be possible to conceive how we could tolerate laws that involve such a great variety of offences, so different in their nature, in one common punishment; not only with the most flagrant injustice, but with the greatest danger to every member of the community, whose life is thus placed in a constant competition with objects of the most trivial and worthless description, and is liable to be sacrificed to the security of

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\* *Eden's Penal Law*, pp. 287, 291.

† *Characters of C. J. Fox, by Philopatriæ Varvicensis*. Vol. ii. p. 468.

offenders, against the consequences of very inferior, and comparatively unimportant, crimes. *To commit a murder, or to free a person from an arrest ; to burn a dwelling house and its inhabitants, or to burn a haystack ; to commit a parricide, or to obstruct an officer of the revenue in the seizure of prohibited goods ; to break into a dwelling house at midnight, or to cut down, or otherwise destroy a tree in a garden ; to poison a family, or to maim or wound a cow*—Is it possible to conceive, that if an enlightened and humane legislature had undertaken to form a code of laws for a civilized country, they could have adopted such measures as these, which are not less dangerous to themselves, than intrinsically extravagant and unjust ; and which might render it indispensable to the life of the poor wretch, who is cutting a stake in a plantation, to murder the owner, who may unwillingly have it in his power to give that evidence which may take the forfeited life of the offender ?

Such in fact is the present state of the criminal law in this country, that it seems to be universally admitted, that *if it were to be carried into strict execution*, it would form the bloodiest system of legislation, by which any nation, ancient or modern, ever punished itself. Instead therefore of attempting to vindicate our present institutions of criminal law upon any principle of reason and justice, it is usual for those who wish for their continuance, to contend that they are not intended to be carried into effect, but are only meant to furnish the judicial authorities with sufficient power to include every description of crime, and, at the same time, to allow such an exercise of discretion, as may give to a severe law a mild and temperate execution. To such an extreme has this idea been carried, that a very popular modern writer\* has erected upon it a system of legislation, which he denominates the “*Law of England*,” which as he informs us, “*by the number of statutes creating capital offences, sweeps into the net every crime, which under any possible circumstances, may merit the punishment of death ; but when the execution of this sentence comes to be deliberated upon, a small proportion of each class are singled out, the general character, or the particular aggravations of whose crimes, render them fit examples of public justice ; and by this expedient, few actually suffer death, whilst the dread and danger of it hang over the*

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\* Dr. Paley.

*crimes of many."* This attempt to represent as a preconceived and regulated system of legislation, a state of our judicial concerns, which has arisen from the mere impossibility of carrying such sanguinary measures into effect, is not less repugnant to the truth, than it is foreign to the ideas of our ancestors; who, however they might err on the side of severity, were certainly sincere in their hostility against crimes, and intended their enactments should be carried into effect. The fallacy of this statement has been fully shewn by Sir Samuel Romilly,\* by whose enlightened efforts and indefatigable exertions, some of the most cruel and obnoxious of these statutes have been repealed.† It is not however by the success that has attended his labours, that we must estimate what is due from the community to this real patriot and distinguished senator. The reforms effected by him, bear indeed a small proportion to the enormous mass of sanguinary enactments which disgrace our statute book; but the maxims of legislation which he has laid down, and the sound principles for which he has contended, apply to the whole system; and will, it may confidently be hoped, eventually produce such alterations as may remove from our judicial code, the imputation of cruelty on the one hand, and prevent the impunity of the criminal on the other.‡

In fact, it is in this ill-judged lenity, or rather inefficacy of the law,

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\* In his tract entitled "*Observations on the Criminal Law of England*," as well as in his speeches in parliament.

† In particular, the 8th Eliz. c. 4. by which larceny from the person above the value of 12*d.* was made felony without benefit of clergy, and the English and Irish statutes which punished the stealing from bleaching grounds with death. In the session of 1812, an act was also passed to repeal the statute of Eliz. which made it a capital offence for soldiers or mariners to wander or beg without a pass.

‡ May this expectation be accomplished! for, since the above was written, the world has been deprived of the illustrious individual to whom it relates, and can now only avail itself of the lessons which he has left for its improvement! May we not, however, venture to hope, from the sincere sympathy and universal grief which this event has occasioned, that the cause he so warmly espoused, and the sentiments he so forcibly expressed, are deeply felt by the nation at large? And that his loss will, as far as possible, be repaired by an increased determination on their part to promote the great and beneficent objects which he so faithfully pursued? Such a result of his labours may delight his spirit, and add to his happiness in the regions of the blest.



that we discover one great cause of the extraordinary profligacy and depravity of the present day. Offenders of every description, hardened and instructed in wickedness, are acquitted by our courts and liberated from our gaols, to renew their depredations on the community. Such is the inevitable consequence of enacting a punishment wholly inapplicable to the crime, that the public suffers, whilst the criminal escapes. He has indeed been meshed in the great net of the law, but this net retains scarcely one in a thousand,\* and he has escaped so often, that he has little fear of encountering another trial. Such is the acknowledged barbarity of our laws, and such the more enlightened and humanized state of the public feeling, that they are no longer compatible with each other. Accordingly we perceive on every hand indications that a further perseverance in our present track will not long be possible. Whilst our institutions continue in their present form, persons injured frequently will not prosecute—witnesses will not attend—juries will not convict, and judges cannot condemn.† In the mean time, guilt and rapacity raise their heads with renewed insolence, and brave the ministers of law on the seat of justice. Such a state of things cannot, it is evident, admit of delay. It has been proposed by many excellent men, that attempts should be made to apportion punishments to offences, so that every crime should have its appropriate penalty; but, to say nothing of the acknowledged and numerous difficulties which must attend the completion of such a task, if the public are to wait till the endless diversity of opinion to which this subject would give rise be reconciled, all prospect of redress would be hopeless. Let it not however be imagined, that the public depredator, the hardened criminal, is to be suffered to persist in his

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\* It was stated in the House of Commons, in the debate on the shop-lifting and canal bills (Feb. 1810) that out of 1872 persons who had, in the course of seven years, been committed to Newgate, for stealing in dwelling houses, only one was executed.

† "At Carnarvon Sessions (1818) J Jones, a drover, was tried for uttering forged bank notes, and, notwithstanding thirty-one witnesses established the charge, and Mr. Glover, inspector to the Bank of England, traced thirty-nine notes to have been paid by the prisoner, the jury returned a verdict of *not guilty*. Next day, the same prisoner was indicted for having forged notes in his possession, and the jury again returned a verdict of *not guilty*."—The records of our Courts of Justice abound with similar instances

guilt. Let his hopes of impunity be dispelled, and his fears be awakened by buildings rising in every county and every city of the kingdom, calculated to repress his enormities, to subdue his obstinacy, to form him to new habits and better dispositions, to render him sensible of his misconduct, and enable him to provide for himself by honest industry :—let the Courts of Justice, instead of dismissing offenders, to commence a new career of crimes, deliver them over to these no less effective than truly benevolent institutions ; where, as has already been shewn by ample experience, there is every reason to expect that a great majority may be redeemed from their guilt, and restored to society ; or, if this should not be found in all cases practicable, the community at large will derive, from the very efforts that may be made for this purpose, the inestimable benefit of being freed from the depredations of the innumerable hordes, who are at present its annoyance and its dread, and the sacred delight arising from the performance of the first of christian duties.



#### NEW-YORK SENATE.

The following Report has been laid before the New-York Senate, by the Hon. Samuel M. Hopkins, within a few days past. It looks well for the work of reform.

##### *Report of the Committee on the Criminal Law, and the employment of convicts on the canals.*

Mr. Hopkins, from the select committee to whom was referred so much of the speech of his Excellency the Governor as relates to the criminal law, and the employment of convicts on the canals, reported as follows, to wit :

That the particular points and questions in the criminal law, which his Excellency has mentioned, and to which therefore, the attention of your committee has been required, appear to be the following :

1. Our experiment of a mild system of punishment, intended to prevent crimes, and reform criminals, and the result of that experiment :

2. The doubt expressed whether we have not, in our anxiety for reformation, neglected the superior importance of prevention :

3. The improvements suggested to be made, by the moral classifi-

cation of offenders ; by the adoption of solitary confinement ; by the establishment of separate prisons for those who are doomed to severe punishment ; by a graduation of punishments in solitary cells, and finally by abridging the duration of imprisonment.

The consideration of these subjects has led the committee to examine our whole system of punishment, whether considered as a means of prevention or of reformation ; and the question of imprisonment in particular, has led them to consider the *prisons*, and the means and objects of confinement in them, with the actual treatment of prisoners and its effects ; whether we have such prisons as are sufficient and proper ; if not, whether we can and ought to build others ; what will be the expense, and what ought to be the discipline observed in them ; finally, what other punishments can, with a proper regard to the state of public opinion, be now adopted.

For the more perfect understanding of these subjects, it seemed useful to examine the authentic history of our state prison system from the beginning ; as it is contained in our legislative acts and reports, and in the reports and proceedings of successive legislative committees, and special commissions, and in the reports of the treasury and the detailed statements of the inspectors and officers of the prisons. Such documents, more especially for the last twenty years, have been examined by the committee, who are of opinion that they offer many results which cannot fail to be instructive.

It appears that since the year 1796, the whole amount of our appropriations for the building and repairs of the two state prisons has been

\$535,189 83

And the total amount of expenditure for the support of  
the prisons and incidental expenses, is

977,732 64

Making in all,

\$1,512,922 47

The total number of convicts committed, has been

5,069

Of which number more than half have been pardoned,  
that is

2,819

Of the whole number of convicts, considerably less than one half are natives of this state, and nearly one third are from foreign countries ; the rest, of course, are from the United States.

The average number of prisoners from the returns of the last six



years, is 745. By the last returns the total present number in both prisons is 817, which is larger than that of any former year.

The actual expense of the criminals maintained in these prisons has been estimated, according to an average of the last six years, for the prison in New-York, and of three years for that at Auburn, [the latter being a recent establishment,] and the committee calculate it as follows :

The New-York prison and repairs, has cost	\$253,346
Auburn do	281,843 83

---

535,189 83

On which sum, to cover interest, repairs, and insurance, the charge ought to be 10 per cent per annum : say 53,513 98

Average expense per annum of transporting convicts to prison, 9,704

do. the expenses of sheriffs 9,250, suppose half for this object, 4,625

do. do of district attornies. N.B. As they have been paid the last three years by the *counties*, the average of those years is taken in a due proportion to the three previous years, compared with the sheriff's bills, \$13,933

Suppose half for this object, 6,966 50

Salaries of officers at the New-York prison, 12,989 67

Expense of guard at do. 7,531 33

All other expenses, [under this head come support and clothing,] 22,948 28

Collective amount of the three last items at Auburn, on an average of three years, 14,187 74

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Total, \$132,471 50

Which, divided by 745, the average number of prisoners, makes about \$177 81 per annum, as the expense of each prisoner.

For a few years after the first establishment of our state prison, the institution seems to have realized all the most sanguine hopes of its humane projectors. The name of it, inspired some dread among criminals, and its government was conducted with a degree of zeal and attention which often gives flattering success to new institutions,

but which can hardly be expected to last always. Accordingly in the report of 1803, we find that the labour of the convicts came within a small amount of the expense of their sustenance, and the inspectors express an opinion, "*that no penal system in any state was less expensive, or more fully answered the intended purpose.*" But this report contains the first ominous intimation that "*there will soon be a want of room.*"

For eighteen successive years since that time, the state prison reports exhibit a distressing struggle against embarrassments and difficulty of every kind. They state the overwhelming number of convicts; their profligate and abandoned character; the impossibility of making their labour maintain them; pecuniary embarrassment in the affairs of the prison; enormous demands upon the public treasury, without the intermission of a year; new and fruitless endeavors to make labour productive; the fearful progress of the prisoners in corrupting one another; and finally, fires and dangerous insurrections. The committee, in order to justify this general description, crave leave to go a little more into detail, and to quote particular examples, to justify their assertions from the official reports contained in your journals.

In 1804, the inspectors and agent mention a destructive fire; losses by bad debts; pecuniary embarrassment, and a balance for the support of the prisoners, of eleven thousand dollars beyond the produce of their labour.

In 1805, the number had greatly increased; the prisoners had cost more and earned less, than the preceding year, and of course the balance against their labour was increased.

In 1806, the officers complain that more room will be wanted. They state that the propensity to vice is much increased by indiscriminate confinement; and that "*lessons of infamy,*" are inculcated, and little reformation is seen; and they recommend that no person sentenced for less than five years, be sent to the state prison.

In 1807 and 1808, the vices of the system seem to have developed themselves more fully. The number of prisoners was so great as to crowd the hospital with sick, and more than 20,000 dollars was wanted, beyond their labour, for their support. The report suggests the benefit of solitary confinement in the several counties, and complains of the great number of convictions which were actually cases of second

offences, though not known to the court to be so at the time of trial. About this time, necessity introduced the regular practice of granting pardons to so many, as to make the total number of discharges equal to the commitments, and this has continued to the present time.

In 1809, was the first suggestion of another state prison in the interior of the state.

In 1810, the agent complains that the prisoners are so numerous that they cannot be employed to advantage, and yet in this year 130 pardons were granted; the number of convicts received was 171.

In 1812, the report pressingly urges the evil of crowding so many convicts together; and remarks that the oldest and greatest offenders, corrupt and demoralize the younger, and again urges the necessity of another state prison.

In 1813, another fire.

In 1814, it is stated many are committed for second and third offences; an account is given of the alarm of the citizens at the semi-annual visit of the judges, when forty or fifty of the *best* prisoners are usually recommended for pardon, and of course sent back into society.

In 1815 and 1816, the number of convicts continued to increase; and there is renewed urgency to have the bounds of the prison enlarged, or a new one built. A suggestion is made, that there is no competent punishment for prisoners setting fire to the prison; and discouraging proofs are given of the hardened character of the convicts.

In 1817, was laid before the legislature the report of Messrs. Burt, Radcliff, and Taylor, who, by a special act, had been appointed commissioners to examine into the concerns of our state prison, with liberty to visit that of Philadelphia. Your committee can do no more than to quote a very few of the observations contained in that important and very able report.

Those commissioners represented the want of room, and the consequent necessity of pardon, as one of the great evils of the establishment. They consider 450 as the greatest number that can be profitably employed at labour in the then prison. They mention the striking fact, that of all those who had been committed for second and third offences, about two-thirds had been discharged from their former sentences by pardon; and they admit that the system had



failed of effecting the *great object chiefly in view*. They describe the prisoners as mutually corrupting and being corrupted by each other, and as leaving the prison more confirmed in their vicious propensities than when they entered it.

In 1818, the annual report avows that the system is "*far, very far, from answering the end intended;*" that humane and mild treatment has seldom reclaimed the vicious, and that we must have a better system, "*not a mere plan of good living and of light punishment, but of dread and terror.*" The prisoners are described as the most "*abandoned and profligate of mankind,*" and it appears that of such persons, the Governor was compelled to pardon and send out about 280, in order to make room for 300 new comers. This year there was a dangerous insurrection, and a great amount of property destroyed.

In 1819, it appears that the late law for punishing offenders within the prison by whipping, had been applied in few instances with salutary consequences.

In 1820, Messrs. Morse, Cooper and Campbell, who, by a joint resolution of the houses, had been appointed commissioners, presented a report upon the state prison, abounding in valuable facts and observations, which your committee have freely made use of. These commissioners admit that from some cause or other, "*penitentiary punishments have entirely failed of producing the results originally anticipated from them;*" and that crimes have multiplied to an alarming degree.

The prison reports of 1820 and 1821, do not vary essentially from all the foregoing, in their general character. The hope is occasionally and benevolently expressed, that the system will hereafter be so perfected as to answer the intended purpose. But the obvious fact that it has not yet done so, is as plain from the report of 1821, now on the table of the Senate, as from any previous document. In that paper the convicts are described as "*desperadoes,*" with hearts "*steel-ed*" to moral feeling; and of such prisoners, 240 have again been let loose upon society the last year, by pardon.

It is just to observe that if the present system has failed of its object, that failure has not been for want of zeal and effort in the administration of it, directed by the wisdom and watchful care of the public councils for twenty-five years. It has been governed at different times,

by persons of different religious denominations, and opposite political parties, and by successive "*agents*," all of whom, in turn, have been urged by motives of benevolence or rivalry, or the hopes of applause and advancement, to give it the utmost possible success. The history of their transactions is, for the most part, only a history of mortifying failures and disappointed hopes.

Neither have any exertions been omitted to remedy the defects, which, from time to time have been observed, and to furnish motives to the prisoners for reformation. Expensive establishments have been formed for their employment at labour, by which they would acquire the means of an honest livelihood. Schools are established in the prison; a very worthy and pious clergyman is employed for their religious instruction, and rewards are reserved for the most deserving, derived from part of the avails of their labour. Classifications have been introduced according to their supposed moral characters; and finally, laws have been passed to exclude from the prisons, all who are convicted of small offences. Still the number of convicts is greater now than at any former period, and they are described in the official report, as "*desperadoes*;" and "*the most abandoned and profligate of the human race.*"

Upon the whole view of our state-prison system as *hitherto conducted*, your committee are compelled to adopt the conclusion, that so far as reformation is concerned, it has wholly failed; and not only so, but that it operates with alarming efficacy, to increase, diffuse, and extend, the love of vice, and a knowledge of the arts and practices of criminality.

In saying this, the committee do not mean to question but there may have been individual instances of persons, who have led regular and moral lives after having been in the state prison. Whether any convict of a character habitually depraved, has after his discharge afforded evidence of a virtuous life, they have not learned, nor do they consider such questions [though sometimes urged] as important upon the present occasion. For that such cases, if they have existed, are not frequent enough to become an object of attention in the enactment of our Penal Code, is proven by all our experience; and upon *theory*, it would seem most unlikely, that a thief, a counterfeiter, or a house-breaker, should be reformed in consequence of being shut up in a spacious building, in ease and comfort, and in the society of many other

thieves, counterfeiters, and house breakers. That a whole community of intelligent men should have expected such a result, exhibits one of those instances of public infatuation, of which examples are not wholly wanting, but which do not the less excite our wonder when the illusion is past.

The question how far this system has operated by way of *prevention*, is in a great measure included in, and answered by, what has already been stated. But as it is not unfrequently urged, that it has at least the praise of shutting out from society a large number of criminals who would otherwise be preying upon community, the committee think it right to go into some calculations, which will show, as they think, that the number of convicts at liberty, is much greater than that of those who are in confinement.

The entire number of prisoners who have been discharged by pardon, was before stated at 2,819. But of those, it is obvious that many would have been discharged by the expiration of their sentences, and that from the residue a certain deduction must be made for deaths.

The annual returns do not furnish the elements; from which an *accurate* calculation can be made of the number of living convicts, according to the principles in use among those who calculate the probable duration of human life: But the committee have attempted to find the probable average time of the commitments for each year; in doing which, they allow twenty years each for the complement of the lives of those prisoners who are committed for life.

They further find, on an estimate of the deaths for twenty years past, that the average number of deaths is one to every twenty-seven prisoners each year, or a little less than  $\frac{1}{27}$  per cent.

Estimating, therefore, the commitments of each year by their average duration, and deducting deaths according to the aforesaid ratio, the committee calculate that the number of prisoners who ought to have been in confinement on the 31st of December last, would be 2,080, and as no more than 817 were in fact in prison, it would follow that more than 1200 are at large. That is, for two convicts who are in confinement, there are *three* at liberty, who ought to be in prison, if there were prisons to contain them.

But to show more clearly the increase of our criminal population, it may be interesting to estimate, if possible, what would be the number if the same crimes were now punished in the state prison as for-



merly. In 1807, the inspectors stated that out of 190 committed, 114 were for small offences, and such as have not of late years been the subject of imprisonment in that prison. This statement is the only one which the committee have found upon the subject. But if the number is now supposed to be in the same proportion as then, to higher offences, we shall find an additional corps of 1200, who are petty offenders; and the whole number of convicts would be about 3,300. But in 1807 the number of prisoners actually confined was 430, so that the increase since that time is more than 700 per cent. while our population has only increased in the ratio of

But without including the smaller offences, it is obvious that upon the present system, the punishment of those who have been actually discharged by pardon for want of room, would now require two more state prisons, at an expense of half a million of dollars, besides an annual appropriation of more than \$100,000, in the whole, for their support.

In justice to our own state it is proper to observe, that more than half of our convicts are persons who come from foreign countries and neighbouring states; many of them probably attracted by the hopes of abundant plunder, and some no doubt by the good reputation which our state prison cannot fail to have acquired in the community of felons.

What is the annual expense of supporting the convicts who are in prison, has been already stated. But if we turn our attention to those who *are out of prison*, and consider in what various ways they distress the community, by their theft, forgery, fraud, and violence in all their forms; harassing the toils of honest industry, and exhausted its earnings; rendering property insecure, and protection expensive; we must admit that the tax paid for the support of the prisoners, is one of the least evils of the extension of criminality.

Facts that are public and notorious, confirm the committee in the view they take of this subject. Our newspapers teem with relations of crimes of every dye. Our cities, villages, and manufactories are frequently in flames; and to find secreted combustibles is no uncommon occurrence. It is understood that connected bands of horse stealers and counterfeiters extend from Canada, through several parts of the Union. The mails of the United States no longer afford security. Felonies that affect the stability of our monied institutions are

becoming common; and the forgery of bank paper, is an art so perfected, as to deceive the banks.

The committee hesitate not to state their opinion, that a government which fails to repress such a course of criminality, fails also in its highest duty—that of protection. They are equally clear in the opinion, that after having for twenty-five years employed our sympathies and resources for the comfort of the criminal part of society, it is now our duty to look to the innocent; and that the industrious classes, preyed upon by the convicts who are out of prison, and taxed for the support of those who are within, and suffering from the insecurity of all their means and earnings, are now fit objects of our care.

In considering a system of punishments, the committee have had no doubt that the question ought to be simply, “*what will be most effectual for the protection of society, under the given circumstances.*” Punishments too severe, are to be equally avoided with those that are too mild, *for they equally fail of the object.* But the committee assert the right of society to protect itself by any such means as may be most efficient; and they deny that the criminal who makes war upon mankind, has in this respect any rights, which are not subordinate to the higher rights of the injured community.

Punishment is not for revenge; and rightly considered, it has less reference to *the subject of it*, than to *the spectators*. That punishment would be most proper, which, with the least suffering and pain inflicted upon the recipient, should make the strongest impression upon the public mind.

But to make any impression upon the minds of either convicts or the public, there must be *suffering*; and to make any *adequate* impression, *such suffering* as will excite feelings of *terror*: and the highest and best purpose of punishment is only then well answered, when the punishment inspires the minds of observers, especially of youth, with a salutary horror of the consequences of criminality.

But whatever may be the individual opinion of the committee, they have borne in mind that nothing can be made effectual, which the public sentiment does not sanction. They have further considered the necessity of putting an end to that wasteful course of expenditure, which for so many years has exhausted the resources of the state upon prisons and prisoners; and they have concluded, that more perhaps, cannot usefully be done at present, than to begin a reformation

which future legislatures may in their wisdom perfect, as time and experience shall enable them.

The most important alteration which they have to recommend, is the abandonment of labour as an engine of punishment, and the substitution of severe but short confinement in cells, with solitude, silence, darkness, and stinted food of coarse quality. With the abandonment of labour in any prison, may be given up a vast and expensive list of shops, implements, inventories of stock and bad debts, with the expenses of a guard; a separate agent may be dispensed with, and a diminution of perhaps half, effected in the expenses of rations for the prisoners. The necessary expense of keeping 1000 prisoners in one prison, will then be a small amount for each.

On the subject of expense, however, the committee have gone into some calculations, the results of which, they hope will not be too prolix to be submitted to the Senate.

According to the report from the Auburn prison, the committee understand that down to the last year, there have been constructed 285 cells for solitary confinement, at an expense of about \$22,000, making something less than \$80 for each cell.

An eminent master builder has been engaged to make an estimate of the expense of building cells in the yard of the state prison at New-York, and he has furnished the committee with a very detailed and satisfactory calculation, shewing that a block of 144 cells will there cost about \$24,000, or \$166 to each cell.

It appears by the Auburn report, that the rations for the prisoners are furnished at 4 1-2 cents each, (not including the hospital,) and that they consist of a full supply of good provisions, equal to the army rations. Those at New-York are now furnished at six cents each, and the committee presume are equally sufficient in quantity, and good in quality.

It is believed to be no unreasonable estimate, if we suppose that prisoners in close confinement, without exercise, and intentionally stinted as to food, (and that food of coarse quality,) may be fed at half the above prices respectively. The experiments of Count Rumford upon the economy of food and preparation, would tend to the same conclusion.

In solitary confinement there need be very little or no expense for clothing; in a great majority of cases their own clothing will be sufficient; especially as the time of imprisonment is intended to be short.



But the greatest saving in both prisons, will be in dispensing with the *guards*, which in the two prisons together, now cost about \$10,000 annually.

Assuming these data, therefore, the committee offer the following calculation of the expense of keeping 500 prisoners in solitary confinement in New-York, and 500 more at Auburn :

*Estimate for 500 prisoners in New-York.*

182,500 rations, at 3 cents,	\$5,475
Hospital, suppose	1,000
Fuel, suppose	1,000
<i>Officers, viz :</i>	
1 Agent and keeper,	1,400
1 Clerk,	600
Deputy keeper,	600
12 Turnkeys, 500,	6,000
Board of Physicians,	250
Chaplain,	250
	<hr/> 9,100
	<hr/> \$16,575

Which gives to each convict an annual expense of	33 15
Add for the interest of the cost of a cell, at 7 per cent.	11 62
Making for each prisoner, which however is exclusive of the fees of sheriffs and expenses of prosecution, and of the county expenses before conviction,	<hr/> \$44 75

*Estimate for 500 prisoners at Auburn.*

182,500 rations, at 2 1-2 cents,	4,106 25
Hospital, suppose	1,000
Fuel, suppose	500
<i>Officers, viz :</i>	
Agent and keeper,	1,000
Clerk,	600
Deputy keeper,	750
12 Turnkeys, at 350,	4,200
Board of Physicians,	100
Chaplain,	150
	<hr/> 6,800
	<hr/> \$12,406 25

Which makes for each prisoner,	24 81
Add for interest of the cost of a cell, at 7 per cent.	5 60
Total amount of expense of a prisoner at Auburn, exclusive of the fees of sheriffs and expenses of prosecution,	
and the county expenses before conviction,	<hr/> \$30 41

From this statement it would appear that the cheapness of living, makes a difference of about one third in favour of Auburn; and it is also obvious, that if all our prisoners could be confined under the care of one set of officers, it would produce a further saving. But to countervail that saving, the expense of transporting the convicts, (the greatest number of whom always come from the city of New-York,) must be taken into the account. Upon the whole view of this subject, therefore, the committee do not doubt but it will be the permanent policy of this state to preserve a prison in or near New-York.

There will always be a certain number of criminals, whose arts and practices are so dangerous to society, that they ought never to be left at large. But if such convicts are imprisoned for life, it would be too vindictive to submit them to severe treatment intended for other criminals, whose term of confinement would be shorter. They ought therefore to be allowed labour, but that labour should still be *severe*: and even then it should be allowed only as a favour, and upon the strict condition of their earning their subsistence.

Should the system recommended by your committee, go into operation, they hope and believe that the number of these prisoners for life will not be very large.

As the system so long and fully established in the New-York prison, will (with some increase of severity) answer the intended purpose, the committee think that the present manufacturing establishments in that prison should be continued. But they beg to be understood as recommending this, merely as a necessary *alleviation* of imprisonment for life, and not at all as partaking of the nature of punishment.

At the same time, the committee think it desirable, that so soon as the funds of the state will allow it, there should be built in the New-York prison a block of about 200 solitary cells, which may be done, either by taking out the floors and partitions in some part of the old prison, and replacing them with cells, or by a new building. So soon as this system shall have gone fully into effect in New-York, and the

number of working prisoners shall have become considerably reduced, the committee suppose that the guard will be dispensed with, which will make a saving of nearly 7000 dollars a year. But as an additional security, they would make it *death* for any prisoner who is allowed to work, to break the prison, or escape from it.

On the whole, therefore, the plan which the committee would respectfully recommend to the consideration of the legislature, is, that prisoners from any part of the state may be sent to either prison; those for life to New-York, at labour; those for limited terms of confinement to the solitary cells, and of course to Auburn, except so many from the southern counties as there may be solitary cells for, in the New-York prison.

As to the economy of this proceeding, there is one other consideration which the committee wish to present. It may be seen from the foregoing statements, that the average number of prisoners for six years past being 745, and the average expense of transportation \$9,704, it follows that the average of expense upon the prisoners is at the rate of about thirteen dollars each, per year, for carrying them to prison. Now the interest of the money necessary to build a solitary cell, even in New-York, has already been shewn to be but \$11 62. The committee believe that the expense of transportation may be diminished, and they intend to propose it. But on the other hand, if the terms of imprisonment shall be shortened, and numbers of those who now are at large shall be returned for second and third offences, as may be expected, it will probably follow *at first*, that the number to be transported will be increased.

If this should be so, it would furnish an additional motive, on the score of economy, for building the cells in New-York as soon as possible; because the annual expense of transporting the prisoners will still farther exceed the annual interest of the cost of cells for them. And the committee think it certain that the annual expense of transportation will be increased, till the efficacy of the intended system shall be felt in deterring criminals from crimes, or driving them off to other states and countries, from whence the major part of them came.

On this subject of expense, the committee beg to be indulged in making another remark, to shew how considerable, even at the lowest, is the cost to which a felon subjects the state.



The foregoing estimate for the annual expense of a prisoner in a solitary cell, in the New-York prison, is	\$43 75
Do. average of transportation,	13
Do. of other expenses by sheriffs, not susceptible of exact calculation, but suppose half of the last,	6 50
Do. of district attorneys for prosecution, by calculation according to the average of the last six years,	18
Expenses to the county before conviction, including the charges of commitment, board in gaol, compensation to poor witnesses, &c. &c. These charges are not susceptible of any calculation, but can hardly be conjectured to be less than	20
	<hr/>
	\$101 25

Then it appears that every profligate who chooses to commit a crimes, can subject this community to a taxation of more than 100 dollars for his support a year ; and that our 800 convicts, whose support now comes to nearly 200 dollars each per annum, will still, after every practicable diminution of expense, cost as much money as would prepare 800 of the youth of our country for lives of public usefulness, by an education at the colleges.

The contemplated alteration in the method of punishment will require that laws on that subject should be re-modeled ; and the committee think they may be greatly simplified. They cannot perceive the reason of the many and various grades of punishment which we have enacted, when probably no human discernment can so graduate the turpitude of crimes, as to show why any given offence among so many, should receive such a particular measure of infliction, rather than one a little greater or a little less.

The committee therefore propose, that for crimes above petty larceny, not punishable with death, there be but three grades of punishment ; and accordingly they throw all offences punishable by the state prison, into three classes, namely—the *highest*, the *lowest*, and an *intermediate class*, between those extremes.

They propose also, that there be three grades of punishment in the cells, as particularly specified in the bill they intend to offer ; and that the court passing sentence have power, according to the nature and aggravation of the case, to subject the offender to either grade of

punishment, but not to control the *duration* of it, which is always to be fixed within certain limits, by law.

They propose farther, that convicts in the New-York prison, who are permitted to labour should be subjected to a more rigorous discipline, with coarser food, but in plenty, till the net income shall meet the expenses of food and clothing.

The committee are fully persuaded that this object is easily attainable, and they recommend that it be imperatively required. And they here observe, that a further reason for keeping all the labouring convicts in New-York is, that food of a coarse quality can always be procured at a very low rate, whereas in the country no such selection of food can be made.

The committee recommend that no manufactures be carried on in the Auburn prison, unless perhaps to furnish the convicts with clothing.

They also propose that the laws should be so amended, that convicts may be sent from any part of the state to either prison, according to the intended mode of punishment, and having reference also to the room which either prison may from time to time afford; and, the better to enable the courts to know the state of the prisons in these respects, that returns of the number of prisoners and of vacant rooms and cells, be furnished regularly to the clerks of courts.

It is hoped that these regulations, if adopted, would enable the courts so to regulate the *place*, *duration*, and *severity* of punishment, that pardons will not become necessary for want of room in the prisons.

In pursuance of these ideas, the committee beg leave to recommend that a sufficient appropriation be made to finish the block of cells begun at Auburn, and not only so, but to finish it in one season. From the information of some very respectable and judicious men concerned in the government of that prison, the committee are satisfied that the necessary intermixture of mechanics and labourers with the prisoners while building is going on, tends to the destruction of all discipline; and unless, therefore, the cells are finished during the coming season, the operation of the system proposed, must be deferred for two years; and in the mean time it is probable that the prison will overflow with numbers. The views of the committee as to building of solitary cells in the New-York prison also, have been already expressed.

When these improvements are once completed, the committee hope that our penal system may be so administered as to require no additional state prisons, and but a moderate annual expense. They cannot doubt that the operation of the system will greatly diminish the number of criminals.

The committee are of opinion that the suggestion of the inspectors at Auburn, relative to the appointment by the legislature, of an annual committee to visit both prisons, is well worthy of attention. In this way, uniformity of discipline might be introduced, and the improvements in either prison be extended to the other. Besides which, your committee believe that the authority of a legislative committee would be more competent to introduce the necessary rigour of discipline, and strictness of economy, than that of the local inspectors can be.

The inquiries of the committee have most abundantly satisfied them that the practice of allowing visitants to see the interior of the prison, and the prisoners, is of most injurious consequence. From the amount received for ticket fees, it would seem that nearly 8000 persons in a year, or about twenty per day, had been admitted. This, to the prisoners, must be a continual amusement, besides the facilities which it cannot fail to afford for improper communications.

The committee recommend that all visitants be rigorously excluded, except in special cases, to be allowed of by the inspectors; and that spectators be only permitted to view the cells through gratings in the outer walls.

They recommend that in each prison a chaplain and physician be employed; that on a proper certificate from the physician, convicts whose health is suffering, may be released temporarily from the cells, the period of which release shall be added to that of their imprisonment; and that the prisoners be allowed such books of religious instruction as shall be authorised on the recommendation of the chaplain, by the inspectors, but no other books.

The committee further recommend that provision be made for the building of solitary cells at the gaols of the respective counties; and that the courts in their discretion, have power to order criminals to be confined in those cells, and that the expense of their sustenance, not exceeding the expense of rations at Auburn, be a charge against the state treasury.



It appears that the officers of the New-York prison have for years, supposed that they had not the power incident by common law to every prison keeper, to correct his prisoner, within reasonable bounds, for misbehaviour ; and on some application to the legislature, it has been alleged that this doctrine was indirectly countenanced.

If such is the doctrine, it is wonderful that the prisoners do not hold at least a divided rule with their keepers in the prison. But while the committee deny that the legislature have questioned the power, they recommend that a declaratory clause be enacted, confirming it.

The last important amendment which the committee have to recommend, relates to the detection of former offenders, who are often indicted, and sentenced for punishment as for a first offence, though when they arrive at the prison, they are recognized as ancient guests. In a neighboring state, they have a regulation by which the Attorney General is in such case, to file an information on which the prisoner is put on trial, merely to receive the enhanced punishment due to him as a former offender. The committee recommend the adoption of a similar law.

In the bill which the committee have prepared for the consideration of the Senate, are contained some additions to, and alterations of the Criminal Code, which will best appear from the bill itself ; and they beg leave to observe, that in the framing of that bill they have derived the greatest aid from a very able report upon the criminal law, and from a bill, which were drawn by a gentleman now holding an executive office, and by him reported in the year 1819, to the Assembly, of which he was then a member.

The committee have prepared a bill in conformity with the views herein expressed, and have instructed their chairman to ask leave to bring in the same.

END OF THE APPENDIX.

